

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



**Hearing Order RH-2-2011
Ordonnance d'audience RH-2-2011**

**Trans Mountain Pipeline ULC (Trans Mountain)
Firm Service Application of 29 November 2010**

**Trans Mountain Pipeline ULC (Trans Mountain)
Demande de service garanti datée du 29 novembre 2010**

VOLUME 3

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

**National Energy Board
444 Seventh Avenue SW
Calgary, Alberta**

**August 24, 2011
le 24 août 2011**

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HEARING /AUDIENCE

RH-2-2011

**IN THE MATTER OF Trans Mountain Pipeline ULC (Trans Mountain)
Firm Service Application of 29 November 2010**

HEARING LOCATION/LIEU DE L'AUDIENCE

Hearing held in Calgary (Alberta), Wednesday, August 24, 2011
Audience tenue à Calgary (Alberta), mercredi, le 24 août 2011

BOARD PANEL/COMITÉ D'AUDIENCE DE L'OFFICE

G. Habib	Chairperson/Présidente
L. Mercier	Member/Membre
R. George	Member/Membre

APPEARANCES/COMPARUTIONS

Applicant/Demandeur

Trans Mountain Pipeline ULC

- Ms. Marie Buchinski
- Mr. Loyola Keough

Companies/Compagnies

Astra Energy Canada Inc.

- Mr. Don G. Davies
- Mr. Dennis P. Langen

BP Canada Energy Trading Company

- Mr. Allan L. McLarty, Q.C.
- Ms. Michelle L. Voinorosky

Canadian Natural Resources Limited

Cenovus Energy Inc.

- Mr. Don G. Davies
- Mr. Dennis P. Langen

Chevron Canada Limited

- Mr. Keith B. Bergner

Chevron Canada Resources

- Mr. Keith B. Bergner

ConocoPhillips Canada Resources Corp.

- Mr. Richard A. Neufeld, Q.C.

Enbridge Pipelines Inc.

Imperial Oil Limited

- Mr. Chris Brett
- Mr. P. John Landry

MEG Energy Corp.

Nexen Marketing

- Mr. Don G. Davies
- Mr. Dennis P. Langen
- Mr. Ken Heywood

APPEARANCES/COMPARUTIONS
(Continued/Suite)

Companies/Compagnies

PetroChina International (America), Inc.

- Mr. Don G. Davies
- Mr. Dennis P. Langen

Shell Trading Canada

- Mr. Richard A. Neufeld, Q.C.

Suncor Energy Marketing Inc.

- Mr. Richard A. Neufeld, Q.C.

Talisman Energy Inc.

Tesoro Canada Supply & Distribution Ltd.

- Mr. Douglas E. Crowther

TransCanada Keystone Pipeline GP Ltd.

U.S. Oil & Refining Co.

- Mr. Don G. Davies
- Mr. Dennis P. Langen

GOVERNMENTS / GOUVERNEMENTS

Alberta Department of Energy

- Mr. Colin King
- Mr. Mike Huk
- Mr. Geoffrey Dixon

National Energy Board/Office national de l'énergie

- Ms. Carole Hales
- Ms. Kristen Lozynsky

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**Firm Service Shipper Group panel
Examination by Mr. Langen**

--- Upon commencing at 9:39 a.m./L'audience débute à 9h39

2979. **THE CHAIRPERSON:** Bonjour. Good morning, everyone. Sorry for the slight delay this morning.

2980. Are there any preliminary matters before we proceed?

2981. **MS. BUCHINSKI:** Good morning, Madam Chair, Board Panel. I know everybody's waiting with bated breath for our responses to undertakings from the last two days, and we will have those later this morning or shortly after the lunch break.

2982. Thank you.

2983. **THE CHAIRPERSON:** That's great. Thank you, Ms. Buchinski.

2984. Well, this morning we're starting with the firm service shippers. Mr. Davies, or ---

2985. **MR. LANGEN:** Good morning, Madam Chair, Panel Members. Seated at the witness table is the firm shipper witness panel.

2986. Closest to the Board is Mr. Stephen Dove of PetroChina International America Inc. Mr. Dove is a senior oil trader with PetroChina.

2987. To his immediate right is Ms. Deanna Zumwalt of Nexen Inc. Ms. Zumwalt is Vice-President, North America, Crude Oil and Marketing with Nexen.

2988. Seated next to Ms. Zumwalt is Mr. Paul Reimer of Cenovus Energy Inc. Mr. Reimer is Senior Vice-President, Marketing, Transportation and Power with Cenovus.

2989. Next we have Mr. Kerry Tychonick of Astra Energy Canada Inc. Mr. Tychonick is Managing Director with Astra.

2990. And finally, furthest from the Board we have Mr. Cameron Proudfoot of U.S. Oil & Refining Co. Mr. Proudfoot is Vice-President, Supply and Marketing, with U.S. Oil.

2991. If we can have the witnesses sworn, Madam Chair.

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2992. **THE CHAIRPERSON:** Absolutely.

KERRY TYCHONICK: Sworn

PAUL REIMER: Sworn

DEANNA ZUMWALT: Sworn

STEPHEN DOVE: Sworn

CAMERON PROUDFOOT: Sworn

2993. **THE CHAIRPERSON:** And just for the record, I apologize, Mr. Langen. It was Mr. Langen who had introduced the witnesses. I did call upon Mr. Davies. And this is just for our record, anyway.

2994. Please proceed.

--- EXAMINATION BY/INTERROGATOIRE PAR MR. LANGEN:

2995. **MR. LANGEN:** Thank you Madam Chair, I'm happy to be mistaken for Mr. Davies any day.

2996. Mr. Dove, do you have before you a copy of the written evidence of PetroChina International (America) Inc., which is Exhibit C1-4e in this proceeding?

2997. **MR. DOVE:** Yes, I do.

2998. **MR. LANGEN:** And was that evidence prepared under your direction and control?

2999. **MR. DOVE:** Yes.

3000. **MR. LANGEN:** Do you have any corrections to make to that evidence?

3001. **MR. DOVE:** No.

3002. **MR. LANGEN:** Is that evidence accurate to the best of your knowledge and belief?

3003. **MR. DOVE:** Yes.

3004. **MR. LANGEN:** And do you accept and adopt that evidence as the evidence of PetroChina International in this proceeding?

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3005. **MR. DOVE:** Yes.
3006. **MR. LANGEN:** And, Mr. Dove, do you have before you a copy of your direct evidence that is the direct written evidence of Stephen Dove, which is Exhibit C1-6e in this proceeding?
3007. **MR. DOVE:** Yes, I do.
3008. **MR. LANGEN:** Was that evidence prepared under your specific direction and control?
3009. **MR. DOVE:** Yes.
3010. **MR. LANGEN:** Do you have any corrections to make to that evidence?
3011. **MR. DOVE:** No.
3012. **MR. LANGEN:** Is that evidence accurate to the best of your knowledge and belief?
3013. **MR. DOVE:** Yes.
3014. **MR. LANGEN:** And do you accept and adopt that evidence as your evidence in this proceeding?
3015. **MR. DOVE:** Yes.
3016. **MR. LANGEN:** Thank you.
3017. Ms. Zumwalt, do you have before you a copy of the written evidence of Nexen Marketing, which is Exhibit C1-4d in this proceeding?
3018. **MS. ZUMWALT:** Yes.
3019. **MR. LANGEN:** Was that evidence prepared under your specific direction and control?
3020. **MS. ZUMWALT:** Yes.

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Examination by Mr. Langen**

3021. **MR. LANGEN:** Do you have any corrections to make to that evidence?

3022. **MS. ZUMWALT:** No.

3023. **MR. LANGEN:** Is that evidence accurate to the best of your knowledge and belief?

3024. **MS. ZUMWALT:** Yes.

3025. **MR. LANGEN:** And do you accept and adopt that evidence as the evidence of Nexen Marketing in this proceeding?

3026. **MS. ZUMWALT:** Yes.

3027. **MR. LANGEN:** Do you have before you a copy of your direct evidence, that is the direct written evidence of Deanna Zumwalt, which is Exhibit C1-6d in this proceeding?

3028. **MS. ZUMWALT:** Yes.

3029. **MR. LANGEN:** Was that evidence prepared under your specific direction and control?

3030. **MS. ZUMWALT:** Yes.

3031. **MR. LANGEN:** Do you have any corrections to make to that evidence?

3032. **MS. ZUMWALT:** No.

3033. **MR. LANGEN:** Is that evidence accurate to the best of your knowledge and belief?

3034. **MS. ZUMWALT:** Yes.

3035. **MR. LANGEN:** And do you accept and adopt that evidence as your evidence in this proceeding?

3036. **MS. ZUMWALT:** Yes.

3037. **MR. LANGEN:** Mr. Reimer, do you have before you a copy of the

**Firm Service Shipper Group panel
Examination by Mr. Langen**

written evidence of Cenovus Energy Inc., which is Exhibit C1-4c in this proceeding?

3038. **MR. REIMER:** Yes.

3039. **MR. LANGEN:** Was that evidence prepared under your direction and control?

3040. **MR. REIMER:** Yes.

3041. **MR. LANGEN:** Do you have any corrections to make to that evidence?

3042. **MR. REIMER:** No.

3043. **MR. LANGEN:** Is that evidence accurate to the best of your knowledge and belief?

3044. **MR. REIMER:** Yes.

3045. **MR. LANGEN:** And do you accept and adopt that evidence as the evidence of Cenovus Energy Inc. in this proceeding?

3046. **MR. REIMER:** Yes.

3047. **MR. LANGEN:** Do you have before you a copy of your direct evidence that is the direct written evidence of Paul Reimer, which is Exhibit C1-6c in this proceeding?

3048. **MR. REIMER:** Yes.

3049. **MR. LANGEN:** Was that evidence prepared under your specific direction and control?

3050. **MR. REIMER:** Yes.

3051. **MR. LANGEN:** Do you have any corrections to make to that evidence?

3052. **MR. REIMER:** No.

3053. **MR. LANGEN:** And is that evidence accurate to the best of your knowledge and belief?

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Examination by Mr. Langen**

3054. **MR. REIMER:** Yes.
3055. **MR. LANGEN:** And do you accept and adopt that evidence as your evidence in this proceeding?
3056. **MR. REIMER:** Yes.
3057. **MR. LANGEN:** Mr. Tychonick, do you have before you a copy of the written evidence of Astra Energy Canada Inc.?
3058. **MR. TYCHONICK:** Yes.
3059. **MR. LANGEN:** That's Exhibit C1-4b in this proceeding?
3060. **MR. TYCHONICK:** Yes.
3061. **MR. LANGEN:** Was that evidence prepared under your direction and control?
3062. **MR. TYCHONICK:** Yes.
3063. **MR. LANGEN:** Do you have any corrections to make to that evidence?
3064. **MR. TYCHONICK:** No.
3065. **MR. LANGEN:** And is that evidence accurate to the best of your knowledge and belief?
3066. **MR. TYCHONICK:** Yes.
3067. **MR. LANGEN:** And do you accept and adopt that evidence as the evidence of Astra Energy Canada in this proceeding?
3068. **MR. TYCHONICK:** Yes.
3069. **MR. LANGEN:** Do you have before you a copy of your direct evidence that is the direct written evidence of Kerry Tychonick, which is Exhibit C1-6b in this proceeding?

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Examination by Mr. Langen**

3070. **MR. TYCHONICK:** Yes.
3071. **MR. LANGEN:** Was that evidence prepared under your specific direction and control?
3072. **MR. TYCHONICK:** Yes.
3073. **MR. LANGEN:** Do you have any corrections to make to that evidence?
3074. **MR. TYCHONICK:** No.
3075. **MR. LANGEN:** Is that evidence accurate to the best of your knowledge and belief?
3076. **MR. TYCHONICK:** Yes.
3077. **MR. LANGEN:** And do you accept and adopt that evidence as your evidence in this proceeding?
3078. **MR. TYCHONICK:** Yes.
3079. **MR. LANGEN:** And finally, Mr. Proudfoot, do you have before you a copy of the written evidence of U.S. Oil & Refining Co., which is Exhibit C1-4f in this proceeding?
3080. **MR. PROUDFOOT:** Yes.
3081. **MR. LANGEN:** Was that evidence prepared under your direction and control?
3082. **MR. PROUDFOOT:** Yes.
3083. **MR. LANGEN:** Do you have any corrections to make to that evidence?
3084. **MR. PROUDFOOT:** No.
3085. **MR. LANGEN:** Is that evidence accurate to the best of your knowledge and belief?
3086. **MR. PROUDFOOT:** Yes.

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Examination by Mr. Langen**

3087. **MR. LANGEN:** Do you accept and adopt that evidence as the evidence of U.S. Oil & Refining in this proceeding?
3088. **MR. PROUDFOOT:** Yes.
3089. **MR. LANGEN:** Do you have before you a copy of your direct evidence, that is the direct written evidence of Cameron Proudfoot, which is Exhibit C1-6f in this proceeding?
3090. **MR. PROUDFOOT:** Yes.
3091. **MR. LANGEN:** Was that evidence prepared under your specific direction and control?
3092. **MR. PROUDFOOT:** Yes.
3093. **MR. LANGEN:** Do you have any corrections to make to that evidence?
3094. **MR. PROUDFOOT:** No.
3095. **MR. LANGEN:** Is that evidence accurate to the best of your knowledge and belief?
3096. **MR. PROUDFOOT:** Yes.
3097. **MR. LANGEN:** And do you accept and adopt that evidence as your evidence in this proceeding?
3098. **MR. PROUDFOOT:** Yes.
3099. **MR. LANGEN:** Thank you, panel.
3100. Madam Chair, the panel is available for cross-examination.
3101. **THE CHAIRPERSON:** Thank you, Mr. Langen.
3102. Is there any party other -- before Imperial, who would like to cross-examine this panel?

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Examination by Mr. King**

3103. If not, then my schedule here says that Imperial wishes to do the cross-examination.

3104. **MR. LANDRY:** Good morning, Madam Chair and Members of the panel.

3105. I would like to introduce myself. My name is John Landry. I am appearing -- as my colleague, Mr. Brett, said -- on behalf of Imperial, and Imperial has no cross-examination of this panel.

3106. **THE CHAIRPERSON:** Thank you, Mr. Landry.

3107. With that then, Mr. King from the Alberta Department of Energy.

--- EXAMINATION BY/INTERROGATOIRE PAR MR. KING:

3108. **MR. KING:** Good morning, panel. My name is Colin King. I am with the Alberta Government, Department of Energy. I've got a few questions for each of the panel members.

3109. Mr. Dove, perhaps I could start with you. Can you turn to your Exhibit -- it's Exhibit C1-4f. It is the written evidence of U.S. Refining & Oil Company -- Oil & Refining Company.

3110. I am off to the wrong start, Mr. Dove. It is Exhibit C1-4e; do you have that evidence, sir?

3111. **MR. DOVE:** It's somewhere here. Go ahead.

3112. **MR. KING:** You do, sir?

3113. **MR. DOVE:** I have it in here but ---

3114. **MR. KING:** You have that, sir?

3115. **MR. DOVE:** Yes, I do.

3116. **MR. KING:** Thank you.

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Examination by Mr. King**

3117. In Question and Answer No. 1, I think it says in the last line,

“PCIA is in the business of treating crude oil and refined products in North America.”
3118. Do you see that, sir?
3119. **MR. DOVE:** Yes, sir.
3120. **MR. KING:** Is your focus of trading crude oil exclusive to within North America or does it extend beyond North America? And I draw your attention to Question 3, the last line of Answer 3, is the word *“Pacific Basin.”*
3121. Is your treating of crude oil and refined products exclusive to North America or is it beyond North America?
3122. **MR. DOVE:** Our concentration is North America but in conjunction with our other offices in Caracas, you know, we get involved with South American crude oil in conjunction with Beijing, Singapore and London. We get involved with trading foreign oil between North America and other continents.
3123. And as PetroChina International office, one of our main concerns of course is supply back to China.
3124. **MR. KING:** All right, thank you.
3125. In your answer to Question No. 3, I think it's the second line down, you use the words *“first step.”* I'll read the sentence:

“Securing Firm Service to the Westridge Marine Terminal is a first step for PCIA in developing long term relationships with Canadian oil suppliers.”
3126. Do you see the words *“first step?”* To the extent that you can, can you elaborate on what you mean by a first step?
3127. **MR. DOVE:** Part of my job was to evaluate all the projects that were publicly available or known in terms of transportation and in that, of course, transportation that connects the Alberta basin with China is a priority.

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Examination by Mr. King**

3128. So I have reviewed the projects and reported to our main office what possible participation that we can do in various infrastructure projects as they come up. And as it turns out, the firm service opportunity was our first step.
3129. **MR. KING:** All right. Thank you, sir.
3130. Now I think I'm catching up to myself. Mr. Proudfoot, can you turn to your written evidence, Exhibit C1-4(f)?
3131. **MR. PROUDFOOT:** Yes.
3132. **MR. KING:** Okay. In your first question and answer, you describe the U.S. Oil as "*...a privately held independent oil refiner and marketer*" and that you operate the refinery in the deep-water Port of Tacoma; correct?
3133. **MR. PROUDFOOT:** That is correct.
3134. **MR. KING:** Can you tell us how your company might be different from other land-based refiners that are physically connected to the Trans Mountain Pipeline?
3135. **MR. PROUDFOOT:** Well, I think firstly it is worth noting that we are a downstream refiner marketer. We have no upstream assets. We are buying crude oil at market, we are refining it and we are selling those products at market within the Pacific Northwest.
3136. **MR. KING:** Do the other refineries in the northwest have access to deep-water ports like your Tacoma refinery?
3137. **MR. PROUDFOOT:** I believe they do, yes.
3138. **MR. KING:** Thank you.
3139. I think your evidence indicates that you are not physically connected with the Trans Mountain Pipeline. Do you see that that would be possible or feasible in the future?
3140. **MR. PROUDFOOT:** U.S. Oil's connection to the Trans Mountain Pipeline has been the usage of the Drakes Bay, which is a barge U.S. Oil had commissioned in conjunction with TMPL's requirements for a fixture or a vessel with

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which to take crude oil off that dock. At this time, there has been no feasibility study done, to my knowledge, that would look at connecting to that pipeline system.

3141. **MR. KING:** All right, thank you.

3142. Can you look at Question 3 and Answer 3? Your answer indicates that:

"Having firm service to the Westridge Marine Terminal will allow U.S. Oil to attain some security of supply for its Tacoma refinery..."

3143. And then you go on to say:

"...similar to that available to other land-based refiners that are physically connected to Trans Mountain..."

3144. What do you mean by that? What do you mean by "*some security*"? Do you feel that other land refiners have greater security?

3145. **MR. PROUDFOOT:** I would say the answer to that is yes. Currently, the other land-based shippers and refiners within the Pacific Northwest are not currently having to bid for space on that pipeline.

3146. Our pipeline connection again to that system has been through the use of a barge, and we view that barge as the extension or our pipeline connection.

3147. **MR. KING:** All right. Thank you, sir.

3148. Mr. Reimer, could I ask you to turn to your evidence, which I believe is Exhibit C1-4c?

3149. **MR. REIMER:** Yes, I have that.

3150. **MR. KING:** Thank you. Under Question and Answer 1, you describe Cenovus as an "*integrated oil company*". In what sense is Cenovus integrated?

3151. **MR. REIMER:** Cenovus has a 50 percent non-operating interest in the Wood River Refinery in St. Louis and the Borger Refinery in Texas, both of which are operated by our partner, ConocoPhillips.

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Examination by Mr. King**

3152. **MR. KING:** Sorry, sir, I didn't catch that. Operated by your partner...?
3153. **MR. REIMER:** ConocoPhillips.
3154. **MR. KING:** Thank you, sir.
3155. In the same answer, you go on to say Cenovus' operations "*include extensive oil sands and conventional oil developments in Alberta and Saskatchewan.*"
3156. Are you at liberty to provide a description of what the size of those plans might be?
3157. **MR. REIMER:** Yes, to some degree. I can refer to our news release of June 6th where Cenovus talks about a 10-year long-range plan where it anticipates total net oil production of about 500,000 barrels per day net by the end of 2021.
3158. **MR. KING:** Thank you.
3159. And I hope I get this right, Ms. Zumwalt. Your evidence, I think, is Exhibit C1-4d. Do you have that?
3160. **MS. ZUMWALT:** Yes, I do.
3161. **MR. KING:** Your description of your company is a bit different from Cenovus. You use the words "large" and "independent" to describe your production. Can you clarify what you mean by "independent"?
3162. **MS. ZUMWALT:** Yes, we are largely an oil and gas producer globally around the world. We do have an upgrader linked to our oil sands assets to upgrade to premium synthetic crude. It's a very small percentage of our production globally.
3163. **MR. KING:** Okay. Your Question and Answer, the first Question and Answer indicates that Nexen "*markets in excess of 300,000 barrels per day of oil in Western Canada*" and then it goes on to say, "*on behalf of approximately our more than 300 producers/customers.*"
3164. Do you see that?
3165. **MS. ZUMWALT:** Yes.

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3166. **MR. KING:** So dividing 300,000 by 300, my arithmetic gives me approximately 1,000 barrels per day as an average.
3167. Would it be fair to characterize your marketing as there may be some very large and, similarly, some fairly modest producers/customers that you serve? Is there a range that you can describe?
3168. **MS. ZUMWALT:** That is correct. I would say roughly, you know, 20 of our top customers probably represent roughly 80 percent of that number, but we have a mixture of both large customers as well as small customers. As well, our customers produce a variety of different grades of crude, both conventional as well as unconventional grades.
3169. **MR. KING:** I really hope I get this one right; Mr. Tychonick.
3170. **MR. TYCHONICK:** (off microphone) It's Smith.
- (Laughter/Rires)
3171. **MR. KING:** That works for me.
3172. **MR. TYCHONICK:** It's Tychonick. Close.
3173. **MR. KING:** Thank you.
3174. I think your evidence is Exhibit C1-4b. Do you have that, sir?
3175. **MR. TYCHONICK:** Yes, I do.
3176. **MR. KING:** Just as context, the third answer indicates that your company buys and sells oil from western Canadian producers and sells it in the global markets. Is that correct?
3177. **MR. TYCHONICK:** Yes.
3178. **MR. KING:** Your company is not a producer. Is that correct?
3179. **MR. TYCHONICK:** That is correct.
3180. **MR. KING:** And your evidence indicates that Astra has been a regular

**Firm Service Shipper Group panel
Examination by Mr. King**

dock shipper since the 1980s. Is that correct?

3181. **MR. TYCHONICK:** That is correct. That would be Astra globally.
3182. **MR. KING:** Okay. And how important to Astra Global is an access to the Westridge dock; does it comprise a large part of your business?
3183. **MR. TYCHONICK:** It's a very serious, important aspect of Astra strategy going forward, and we took the time to analyze the firm service offering from the pipeline it was quite a bit of consternation with the Board to make a decision over a 10-year period to not being a producer to backstop this first step, as Mr. Dove alluded to in opening up the new market.
3184. So we believe that the seriousness of it is very important due to the procurement and development of long-term markets. We've been in the marketplace since the 1980s and we can see from our global presence the tremendous demand pull that I think Mr. Kelly talked about earlier in his statement, and we believe that this opportunity for Astra's producer group, because we also, like Nexen, represent a large producer group with our business.
3185. So we believe it's a very serious and important undertaking that we've done.
3186. **MR. KING:** Okay, well I think you've got to one half of the equation, what I wanted to touch on.
3187. Do you have handy the written evidence of Nexen, Exhibit C1-4 ---
3188. **MR. TYCHONICK:** Just a moment.
3189. **MR. KING:** --- d?
3190. **MR. TYCHONICK:** Yes.
3191. **MR. KING:** And at answer three of Nexen's evidence, I think it's the second line down -- I'll read it into the record:

"Having tidewater access is critical to increasing NMs market options and reducing its reliance on North American markets."
(As read)

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3192. Do you see that?
3193. **MR. TYCHONICK:** Yes, I do.
3194. **MR. KING:** Would you agree with that statement?
3195. **MR. TYCHONICK:** Absolutely.
3196. **MR. KING:** All right.
3197. **MS. ZUMWALT:** Mr. King, might I add to that statement, given it was clearly Nexen's, you know, representation?
3198. I think, given recent market developments, that it's become ever more evident that it's important that Canadian producers get access to diverse markets. It's clear today. It will likely be clear in the future.
3199. Right now, you know, the majority of Canadian crude is sold into the U.S. Midwest market that's receiving a significant discount. We need the ability, essentially, to get access to tidewater to really access stronger global pricing.
3200. **MR. KING:** And once again I think you've gone to half of the equation that Mr. Tychonick has.
3201. But I wanted to look at something else so I guess my next question is to Mr. Tychonick. On Monday there was an exchange with Trans Mountain suggesting that if this firm service application were to be approved there would only be netback benefits to the firm shippers. Do you agree?
3202. Trans Mountain disagreed with that. I presume you're aligned. They expressed their views on that. Do you have a view as to whether or not there would be an increased netback for other domestic markets and why?
3203. **MR. TYCHONICK:** Yes, I've got a response.
3204. I wanted to talk with my producer friends for a moment.
- (A short pause/Courte pause)

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3205. **MR. TYCHONICK:** I do concur with Trans Mountain but I'll provide some more explanation.
3206. The word "certainty" in this document provides a tremendous amount of opportunity to plan. It gives you the opportunity to develop markets. It gives you the opportunity to plan for those markets. It gives the marketplace the chance to make long-term decisions.
3207. When we have the chance to make long-term decisions in the trading market environment it gives us that chance to go back to the marketplace and essentially bid up the price of that various crude.
3208. As we've seen today we've got -- you know, we've heard in this hearing the tremendous amount of bid premiums that are going on on a spot basis. When you get out into the spot market and you have to write your contracts with conditions in them, it's perceived by the marketplace to already be a lower price.
3209. Refiners -- and talking from experience of our international offices -- they need a chance to look at the crude that they're going to buy before they're going to get an opportunity to buy larger quantities of that particular crude.
3210. Also, we've got different buying styles in the marketplace from international refiners, such as tenders. These companies come into the marketplace and they provide tenders to that market.
3211. If you're selling like we do today periodically off the dock when you're successful with a bid into that marketplace you don't have the opportunity to put these Canadian barrels into these tankers so you're left to the side. You happen to be the lowest on the totem pole of their buying cycle because they don't have the time to plan.
3212. So, in essence, if we get the opportunity with a firm service the market has more competition, the panel here has increased supply to the dock, has a rationalization of the marketplace, and I believe that you're going to see the spot bid premiums going back to the Canadian producers.
3213. So in the end the question was does it benefit Astra? It benefits Astra's customers because they're going to get a higher price, and it benefits the planning process into the future. So I agree with what Trans Mountain said.

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3214. **MR. KING:** I'm not -- is there any additional answer from the panel?
3215. **MR. DOVE:** Yes, about the first step, you know, into Canadian operations and it was the Trans Mountain pipeline.
3216. We had the option to participate in the current bid system but some of the issues that we had with it is that it frustrates the economics of the deal. In effect, the bid process puts, as Kerry says, the decisions to the last moment before you're scheduling, but it also depending on the world premium compared to Alberta Basin premium it bids up the dock, so that a refiner who would be -- would really want to have access to Alberta crude is immediately hit with a cost, a fee, a tariff, whatever you want to call it, that is variable depending on the market.
3217. So instead of being able to buy Edmonton prices plus a pipeline fee at cost of service like the land shippers do -- you pay the cost of service fee plus you pay this dock premium, which doesn't allow the market to communicate the price indication that it wants those barrels. It adds this buffer cost in there constantly depending on the market.
3218. So I'm sure -- you know, commodity is always clearer at the worst buyer. If you could sell it -- if every buyer was the same -- agreed on the same price it would be easy, but if you have so much supply that you have to clear at a poor refiner, like an Oklahoma refiner that's a sweet refiner, that's just blending poor West Texas sour by using some WCS and some WTI, he's not going to pay the same price that a Pacific Basin refiner who's running Arab heavy and paying \$20 more for it, would be willing to pay for that if they had access to it.
3219. So also we're a future producer. We should start producing in Alberta in 2014 through our sister company.
3220. So PetroChina was interested in the firm service because it puts us on a cost of service plus basis as opposed to a cost of service plus this fee cost that constantly blocks the economic feedback to the Alberta producer. We would like to buy those barrels but we can't compete with this variable cost that grows.
3221. **MR. KING:** Thank you, sir.
3222. **MR. TYCHONICK:** Mr. King, may I -- just clarification of the question asked. Could I just paraphrase it by was your question who might else benefit from this firm service other than the firm service shippers?

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3223. **MR. KING:** Yes, sir.
3224. **MR. TYCHONICK:** May I offer that the ---
3225. **MR. BERGNER:** Forgive me. I do feel we're hearing an awful lot of evidence that wasn't tendered in the evidence filed by any of these parties, and I'm reluctant to rise with my friend representing Alberta.
3226. Not to suggest friendly cross, but there is some opportunistic answering that is happening. And the question's been rephrased in such a way that it does very much constitute friendly cross, as rephrased by the panel.
3227. There was an opportunity to file this evidence. That opportunity has not been taken, and now we're hearing it for the first time.
3228. **MR. DAVIES:** Madam Chair, yes, he may be hearing this evidence for the first time because -- the reason for that is because it's a response to a question that's been asked.
3229. Now, Mr. Reimer's rephrasing was exactly the question that Mr. King asked, and he's endeavouring to answer it. Now, if the Board rules the question is out of bounds for some reason, then I suppose the answer won't be given.
3230. But to be clear, this is not opportunistic answering of a question, Mr. Reimer is responding to the very question that Mr. King asked. I think Mr. King can confirm that.
3231. **THE CHAIRPERSON:** Mr. King can speak for himself.
3232. **MR. KING:** Thank you, Madam Chair.
3233. I -- the transcript will show, but I think Mr. Reimer provided a fair recharacterization, if not a very close repeat of my question.
3234. Alberta is concerned with increase in market access and diversified markets and the issue of price discounts, and we heard from Trans Mountain in an exchange their view of what this would do to those who are not successful firm shippers. And we have a panel where no two are the same, and we're trying to sort this out and it's very important for Alberta to understand in trying to decide whether

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to support this application or not what the impact may be on net backs.

3235. So you may disallow the question or you may allow it, but it is important for us to ask these panels. And I think we were close to the end of the answer and I was going to move on, and I was actually going to recast it in the negative, which may provide some balance. So if you provide me with any indulgence that way.
3236. **THE CHAIRPERSON:** Any other comment from the objector?
3237. **MR. BERGNER:** Clearly I take the point that Alberta is trying to determine its position on the application, but on the issue of supporting market development, I don't believe there's any adversity in interest between the parties.
3238. **THE CHAIRPERSON:** Just one moment. It's Mr. Bergner, isn't it?
Yes.
3239. Actually, the Panel is finding this to be very useful so, Mr. King, please continue.
3240. **MR. KING:** Thank you, Madam Chair.
3241. **MR. DAVIES:** Before Mr. King continues, can Mr. Reimer finish his answer, Madam Chair?
3242. **THE CHAIRPERSON:** If he hasn't, certainly.
3243. **MR. REIMER:** Thank you, Madam Chair.
3244. I just wanted to emphasize from a producer's perspective how this might benefit or does, in fact, benefit the broader producer community.
3245. Certainty has value. There's no question when we're placing our barrels into the market that the certainty of knowing where they're going to be placed has value in our ability to derive what we believe to be an important feature, and that is, the producers sell high motivation, so really the benefit to the general producer, the Alberta producer in this, is the certainty that's afforded from those barrels clearing the market for sure, the ability for the producer community to know that there's a sell high motivation rather than an international refiner buyer who probably has a buy low motivation. But, as well, the market development strategy.

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3246. And I might offer up by way of an example that a small group of producers 6 years ago supported the Pegasus pipeline, which was a small, under 100,000 barrels a day connection from the congested point in Patoka PADD II down to the U.S. Gulf coast, and that enabled that market to understand what Canadian heavy crude was like.
3247. Those few producers that boxed up that were able to support that, develop that market such that, today, over a million barrels a day of pipeline capacity is destined or going to plan to be destined for that market. So this is the next or the very first step in the west coast piece that's already played out in the U.S. Gulf coast.
3248. **MR. KING:** I'll ask one pointed follow-up question, and then I'll move on.
3249. You mentioned Pegasus. Was your -- your Cenovus is a successor to Encana?
3250. **MR. REIMER:** That's correct.
3251. **MR. KING:** Was Encana involved in Pegasus?
3252. **MR. REIMER:** Yes, it was.
3253. **MR. KING:** Thank you. Now I'd like to ---
3254. **MS. ZUMWALT:** Mr. King, excuse me. Might I just add to Mr. Reimer's last point on market development because I do think it's important and also helps address a question that I think Mr. George had yesterday.
3255. And that is that we at Nexen view this as a very important first step to have firm access off the dock, and we view it as a very important first step to greater west coast access. The reason being is that, I think as Trans Mountain had indicated yesterday, it's a big commitment to make to expand to the west coast and invest billions of dollars. And, you know, producers can be reluctant to do that because that comes with risk.
3256. So this, for us, is a nice small step that gets us firm access to the dock, allows us to begin to build those relationships, and prove up the concept that west coast access makes sense for producers, so very much follows on, you know, Mr. Reimer's Pegasus example.

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3257. For us, firm service and expansion rates tied in were very, very important.
3258. **MR. KING:** Thank you.
3259. Now, my next question is for Mr. Reimer, and I hope only for Mr. Reimer.
3260. There are those who have suggested that there would not be, in fact, any general net back benefits to industry other than the successful open season bidders. And I know that you're not in agreement with this, but I'm asking you to assume that that's true, for the moment. I'm thinking in terms of increased security from a portfolio supply perspective.
3261. Are there any benefits to firm service at the dock, or increased firm service at the dock that could be considered a benefit to this application absent any net back benefits to unsuccessful bidders?
3262. **MR. REIMER:** Could you repeat the question, please?
3263. **MR. KING:** Assuming there are no general net back benefits to industry other than the successful open season bidders, are there any other benefits to the firm service application for those who are not the successful firm service shippers?
- (A short pause/Courte pause)
3264. **MR. REIMER:** There's probably three areas I probably would like to articulate here.
3265. One, perhaps simplistically, I think the application is coupled with the reallocation of capacity between the land shippers and the dock shippers. I think that additional capacity is a fair -- appears from the evidence to be a fairer allocation of this scarce commodity to do within the pipe for capacity.
3266. So I think there is a benefit accruing to others that will be using the dock other than the firm service shippers for that purpose. But also I think that you are also looking at the firm service fees that will be applied to expansion project feasibility studies and the works that are required for expansion.
3267. It's really important, I think, for all of the producer community or others

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that have not firm -- firm service shippers to have that work done, understand what the expansion scenarios are so that they can go out and make informed decisions when the time comes to look at expansion proposals that might involve Trans Mountain.

3268. And the other would just simply be the back at -- you know, back to the Pegasus example, and it's difficult for me to assume that the general -- the general producer doesn't benefit but the market development associated with accessing west coast markets continues to be an important feature that also will be beneficial to those other than the firm service shippers.

3269. **MR. KING:** Thank you, sir.

3270. Madam Chair, those are all my questions.

3271. **THE CHAIRPERSON:** Thank you, Mr. King.

3272. I think we're down to Board counsel. Ms. Lozynsky?

3273. **MS. LOZYNSKY:** Thank you, Madam Chair.

--- EXAMINATION BY/ INTERROGATOIRE PAR MS. LOZYNSKY:

3274. **MS. LOZYNSKY:** Good morning, panel. My name is Kristen Lozynsky. I'm Board counsel.

3275. I'll have a few questions for you; and followed by my colleague, Carol Hales.

3276. **MS. LOZYNSKY:** So first I wanted to address some high-level goals -- your views on the high-level goals that the Board should consider when making its decision, and all of my questions are -- unless indicated otherwise, are addressed to all of you, so please feel free to jump in as you see fit.

3277. Trans Mountain mentioned that -- has discussed this fair and equitable apportionment and that that was a goal of -- one of the goals of their application.

3278. Could you each provide me with your views as to whether the balancing of apportionment is a reasonable goal for Trans Mountain to pursue and for the Board to consider when making a decision?

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3279. **MS. ZUMWALT:** I guess with respect to fair and equitable, I do think it is -- our view would be that it is appropriate to look at the apportionment numbers and try to balance that out.
3280. Obviously, the capacity -- there's a lot of demand for the capacity and ensuring that, you know, different shippers get access to that; I think it's important.
3281. One other thing to me that I think needs to be considered when you look at fair and equitable, from our perspective having firm or certain access to the dock is key. We have typically bid on dock space, are not typically very successful. And the key reason being is that the integrateds have economics that we as a producer in Canada just can't compete with. It's a real challenge month in and month out for us to actually successfully bid on that dock capacity.
3282. Over a 10-year period of being willing to take on the risk of a 10-year commitment to that pipe, we can compete and clearly did, and having that firm access to begin to develop those markets is really important.
3283. So in our view, that is more fair and equitable, it's putting the Canadian producer on equal footing with the integrateds because the integrateds basically have access to the full realm of economics -- the full economic spectrum, whereas as a producer we only have a portion of that.
3284. So certainly the firm aspect of this application, I think, is also an element that makes it more fair and equitable as well.
3285. **MS. LOZYNSKY:** And are there other overarching principles or goals that the Board should consider when making its decision?
3286. I know there is discussion of market development and having a certainty. I think Trans Mountain mentioned yesterday signals to the market, striking a balance.
- (A short pause/Courte pause)
3287. **MR. REIMER:** I think that you've done a pretty good job of capturing what we consider to be sort of the key elements in there. As long as you've got market diversification coupled with the market development and the certainty that's required in order to do that, that's what we need at Cenovus for our growth plans and I think that's what Alberta needs for its significant growth plans and pull oil out of the

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basin.

3288. **MR. PROUDFOOT:** Just one other comment with respect to firm equal and equitable treatment, equitable situation.

3289. At U.S. Oil, the access to a firm, rateable, dependable, certain commodity, certain volume on a month in/month out basis puts us on an equal footing as to all the other land shippers that are receiving crude currently via the pipe.

3290. We see this as security of supply. We took it under the decision to look at a long-term basis to say how much security of supply do we need, for how long, but we ultimately view that firm equals equitable for us and puts us on a equitable playing field as the other refiners within the market in which we're competing.

3291. **MR. TYCHONICK:** I'd just like to add to my -- the comments of the others here today is I just don't want us to lose the fact that we're required to put up 10-year commitments because of the answers you heard about being equal. So we have to come to the Board to put up 10-year commitments to become equal. I think that needs to be understood.

3292. **MR. DOVE:** Yeah, in terms of our interests for the Pacific basin, again, our concern is that the economic communications, you know, the market situation outside the dock, is so different than inside the dock.

3293. You're shielding, you know, the Alberta producers from getting that price indication because of the total cost of service plus the premium compared to, you know, the response that you're going to get inside the area that's somewhat trapped, which would be inside the dock or inside Cushing, Oklahoma.

3294. So as a producer and as a Pacific basin refiner we'd like to see, you know, the economics work better.

3295. **MS. LOZYNSKY:** Thank you.

3296. What are each of your views on the impact the current application will have on support for expansion, particularly the proposed change to allocation as well as the change with respect to refunding of the dock bid premium?

--- (A short pause/Courte pause)

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3297. **MR. REIMER:** Your question was with respect to support for expansion; correct?
3298. **MS. LOZYNSKY:** Yes.
3299. **MR. REIMER:** So in the case of the allocation, the certainty associated with the firm service part of the allocation clearly moves into the market development role, the intent being, the intent being to ultimately get more access off the west coast once the market understands the Alberta crude supply, understands the crude qualities that can be derived out of Alberta.
3300. All of that leads to, I think, expansion justification for allowing the producer to get access to the west coast and west coast accessible markets.
3301. With respect to the firm service fees associated with that, it's quite reasonable in our industry for certain supporters of the project to fund, if you will, studies -- feasibility studies, works required to understand what expansions might look like.
3302. It's that way -- without knowing whether or not the expansion is going to proceed, you want to have more information. You want to have an informed view of what an expansion might look like.
3303. So this seems quite reasonable to use these fees, the firm service fees, as a contribution towards the studies necessary to see -- get more information about whether or not the market is suitable and an expansion can be justified.
3304. **MR. TYCHONICK:** I just wanted to add to Mr. Reimer's comments. Without certainty of access base, I can stress the point that Canadian crude, even though the world basket price today is much higher, that if you cannot go to a refinery buyer with certainty, those conditions that you have to put in the contract sometimes eliminate them from the buying opportunities. So by having certainty you're going to have more buyers on the water.
3305. So even though that world basket price is higher today, we might be able to achieve and be on equal footing with the other players in the international market with some of that certainty, and eventually the market will rationalize itself back into Canada because there's more bidders and the price will go up.
3306. The other point I want to make about allocation of space is that we're all

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being hurt by this. We understand that. The forecasts that are put forward, I'm not going to speak to forecasts, but it's a more fair allocation that we believe Trans Mountain put forward.

3307. We did have an opportunity to talk to them prior to the open season about how can you guys provide us some certainty so we can develop markets, and they came back to us with the TSA. We believe that they've achieved the goal of trying to take that first step to the future expansion.

3308. But if we don't get into the marketplace, and as Mr. Dove indicated, we'll continue to be trapped.

3309. And one other point I want to make about the TSA and the timing of it, when this was done in November 2010, the market structure was much different than it was today. The pricing was much more balanced between Canada and the world markets. It will go back -- as we heard, it will go back to that balance again. Markets rationalize.

3310. You've got to think for one minute, what happens if the U.S. government doesn't approve Keystone XL? We're trapped even longer.

3311. **MS. ZUMWALT:** Just with respect to the link -- I guess the link Nexen sees between support for expansion and the Firm 50 Application, we see a very direct link.

3312. Obviously many of the mechanisms embedded within that application, the use of the firm service fee to help with expansion, expansion rights, which is a significant commitment, and the option to get those expansion rights was very key.

3313. Having that certain access we can begin the market development that would seem to support that expansion was very important. So we see a very, very direct link between the two.

3314. We do believe very strongly that when others see this concept proved out, they will be willing to take on those commitments to open up the west coast, which is beneficial to all producers.

3315. **MR. DOVE:** PetroChina is considering participating in all the expansion plans on the west coast, but it has to be economic and reliable, so you know, we may not get past the first step.

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3316. We may go to step 20 of the various potential projects that we have laid out to our headquarters in Beijing. But each step along the way, we gain experience and, you know, each step will be dependent on the previous step as to how far along we go.
3317. I can't imagine with the size of the hydrocarbon basin in Alberta and the fact that we're only 15 days between the west coast of Canada and Ningbo, our major oil port in Dalien, that development won't happen, but you know, it has to be based on the experience and the economics and reliability as we go forward, so we hope to participate in a lot of the expansion and that, you know, this would be something that would encourage that progression.
3318. Thank you.
3319. **MS. LOZYNSKY:** Okay, thank you.
3320. **MR. TYCHONICK:** I just have one other comment. I've been known to talk too much, so I apologize.
3321. The question of impact for expansion and the refund of the premium, I just want to add to my previous comments from Astra's perspective.
3322. Expansion was tried. Expansion failed. We went back to Trans Mountain pipeline -- when I say we, I speak on behalf of Astra -- and we asked, you know, what can we do as a stepping stone to grow the marketplace and get access to the international world pricing basket. The certainty came back.
3323. My comment to Trans Mountain was, "What incentive are you giving others with the spot bid premiums being allocated as they are? What incentive do they have to expand?"
3324. **MS. LOZYNSKY:** And what was your conclusion in that respect?
3325. **MR. TYCHONICK:** Thanks. My conclusion was that the TSA presented offers a more fair and equitable way so we all feel the pain, more equitable. Maybe there's more incentive.
3326. And I think with 10-year contracts put in front of us and the types of companies that are represented at the table here indicate a pretty good cross-section of

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the future.

3327. **MR. DOVE:** In terms of PetroChina's, you know, development, you know, we chose not to participate in the current system because -- and I may be wrong, you know, because I'm not as experienced as the rest of the panel in terms of nominating on Trans Mountain.

3328. But it just seemed like they're putting up 100 percent of our portion of a dock fee but in the rebate system it was going, you know, predominantly elsewhere, you know, as opposed to participating in the rebate system equally.

3329. So it seems to -- you know, the dock shippers are putting up 100 percent, but the bulk of the benefit is going elsewhere, so we just chose not to participate.

3330. **MS. LOZYNSKY:** Okay. Just turning -- I think you've touched on this, Ms. Zumwalt, about the expansion rates in the TSAs.

3331. What is the firm service shippers' understanding of whether you can transfer or sell these rates?

3332. **MS. ZUMWALT:** To be honest, it's probably a challenge to answer that question because we didn't really contemplate transferring our expansion rates. We would probably like to use them, so I'm not really certain what the answer to that question would be.

3333. **MS. LOZYNSKY:** Okay, then.

3334. **MR. REIMER:** Yeah, I guess the way I would see it as well, the TSA kind of takes place until the expansion is undertaken. The rights happen prior to the expansion taking place. You actually have the right to bid in or go in to the open season.

3335. Our view is that those expansion rights really only have value when the full meal deal in TMX-2 and 3 proceeds. I mean, that's really when there's an oversubscription to the entire large capacity, which obviously our -- you know, our volumes won't get anywhere close to filling the full TMX-3.

3336. Why do I say that? Because TMX-3, by all numbers that I've ever seen, has the best capital efficiency or bang for the buck in terms of capacity available for additional capital to be invested in the system.

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3337. If a capacity of expansion is less than that full meal deal, then those rights really don't have an awful lot of value because that just means that there's not an awful lot of market for expansion off the west coast.

3338. So in that case even the transferability of them -- and I don't believe there is any, but even the transferability of it wouldn't have much value.

3339. **MS. LOZYNSKY:** Okay, thank you.

3340. So if the step-up rates were not a part of the firm service proposal, how would that change your views on the application?

3341. I know you've said, Ms. Zumwalt, that they're very significant.

3342. **MS. ZUMWALT:** We definitely, as Nexen, view them as a very important part of the application. And I think that ties in with our view that the way it's designed today, it allows us to really understand the markets we'd be looking to take advantage of before we make a significant commitment.

3343. **MR. REIMER:** And I would reiterate my earlier comment that with the market development initiative that we would see taking place with firm service, that step-up right is a novel -- is a logical next step to further advancing into that market.

3344. Like I -- when I gave you that Pegasus example, Pegasus was a market entry strategy -- market development strategy that then translated into two other companies, TransCanada and Enbridge putting forward expansion proposals going into that market.

3345. ExxonMobil didn't have anything, you know, to offer, didn't have any step-up price, we'd loved to have seen that in the event that other expansions or other develop -- market develops were going into that market.

3346. We have an opportunity here with Trans Mountain who has a scheme, it makes sense that if we're going to develop that market, we like it, we want -- we're the ones that are putting in 10-year commitments to support it.

3347. If it all works according to plan and those markets like the crude that we produce, then those step-up prices become very important and our ability to get in to the expansion and not be curtailed back in the event that it's oversubscribed.

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3348. **MR. TYCHONICK:** I just want to add, the comment in regard to the step-up rates here is we've got different, you know, different opportunities in this market place.

3349. But I just want to reiterate how important it is with Paul's comment about the demand. If the demand is not there, the step-up rights are not worth anything. So I think it's a key, I just wanted to repeat again.

3350. Thank you.

3351. **MS. LOZYSKY:** Now, yesterday we had quite a bit of discussion with Mr. Kelly about the recent discounting of Canadian crude and Trans Mountain has characterized it as unprecedented and that the anomaly is explainable and expected to be addressed as delivery, infrastructure and processing arrangements change in the future.

3352. Mr. Kelly suggested that we could be in these current circumstances for a couple of years.

3353. I guess first I would ask, do you agree that the current discounting of Canadian crude oil is unprecedented and an anomaly?

--- (A short pause/Courte pause)

3354. **MR. REIMER:** Let me provide producer take on the discounting that was referred to earlier.

3355. We see there's two different features in discounting that is taking place and the first one is the WTI discount. I can't recall when I've seen discounts like that. So I believe that the WTI is unprecedented from that standpoint. That's really driven by a congestion in the Cushing area.

3356. There are projects that are now coming to the table that look to siphon off some of the excess crudes that's -- WTI type crudes that are sitting in Cushing. But the WTI discount is an interest -- is a unique feature that I'm -- haven't seen in the past. It's reversed through additional capacity going down south into the U.S. Gulf Coast.

3357. Projects are on the table to do that. I don't believe that that will correct

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itself until such time as those projects come on stream. I think that's a couple years out.

3358. The other feature that's observed is the heavy oil -- Alberta or Canadian heavy oil discounts relative to WTI, relative to light crude. Now that we have seen before, we see that each and every time that there's a constraint in our Alberta export system. We've seen that almost every decade or through a number of different cycles.

3359. The main reason that happens that I've observed is that we end up in markets that then become saturated and then there is no further takeaway capacity. For example, when there was no takeaway capacity out of PADD II down to the Gulf Coast, we experienced \$50 differentials. We were down very low in terms of our netbacks and that was at a crude price far less than WTI is today.

3360. Those were significant times; they didn't last long because projects got on-stream quickly in order to resolve that. One of the reasons that we sought to support the Pegasus project in the first instance, was to alleviate some of that congestion.

3361. We see potentially with the growth -- certainly Cenovus' growth, but also the growth that CAPP talks about and looks at in its reports, not only in 2010 but 2011, that there continues to be a significant growth in Alberta production, heavy oil, some of it will be upgraded into synthetic crude but there'll be a significant growth in production.

3362. It's quite possible that that might start to begin to saturate even some of the -- not just the PADD II, PADD IV primary markets Canada, but also could start to really put a great big bite into the U.S. Gulf Coast market. Without West Coast access we risk further discounting at that time when that cycles.

3363. So we will see the cycles coming back from congestion once XL starts up. We'll see the results or the congestion alleviate once all of the line integrity issues on Enbridge and Trans Mountain, Express and Keystone, their start-up problems, once those short-term apportionment problems solve themselves, we're going to see the short-term apportionment issues open up capacity, but the long-term we require further market development, we need further capacity off the West Coast.

3364. **MS. LOZYNSKY:** Okay, thank you.

3365. Mr. Proudfoot, did you have any views on this?

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3366. **MR. PROUDFOOT:** Certainly I don't respect -- or I don't represent the producer side of this aspect as we are an end user.
3367. The biggest point that I may harp on a little bit here is the importance of security of supply. Certainly from my views as being in the market both from my days in Canada as well as now where I'm at down in the States is, you know, I believe it's -- there's going to continue to be more and more production, there's going to be more and more upstream and they're going to need to find other additional markets.
3368. Again, that's outside of why I'm here and who I'm representing, but certainly our enterprise, our endeavour, as a refiner we are -- we have had significant experience with running Canadian crude over the last many, many years, predates my tenure.
3369. But again, for us I believe expansion overall will create a greater level of security, a greater level of rate ability and will allow us to operate and plan and manage our business accordingly in a far more transparent method.
3370. I do concur that with more transparency and more market development that that should play into the hands of producers in terms of equilibrating to a more market reflective or more world market price.
3371. **MS. ZUMWALT:** Only one thing I'd like to add is I think our markets are efficient, as Mr. Kelly indicated, and yes, that gap will go away and it may return and it will go away.
3372. When it happens, I mean, I wish we all had a crystal ball and we could figure it out and then we'd all make lots of money and that would be wonderful. We don't ultimately know.
3373. I mean, I think ultimately, for example, when Nexen participated in the open season we certainly didn't see the differential between WTI and Brent we see today. Did we think that we were going to see a discount; yes. Did we think it would be \$15 to \$25; absolutely not. We did not foresee that.
3374. I think the key thing when you look at the market and in order for the market to be efficient -- it's not efficient on its own -- it's important that people in companies take steps to make that market efficient. And in our mind, it is projects like Trans Mountain is proposing with a Firm 50 that allow that to begin to happen.

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Without projects like that and other projects, this phenomenon can continue. So it does require action; it just doesn't happen on its own.

3375. **MR. DOVE:** In PetroChina's view, when we were bidding this back in October 2010 I think was the time -- currently the marker for the world versus the mid-continent is the Brent WTI and it's currently -- this morning it was trading at \$24.30. That value is \$1.60 on November 7th.

3376. The only market wire I had in my computer this morning on November 7th, 2010 it was \$1.60. So you can see the world has changed quite a bit in terms of the balances that existed at the time that the bids had to go in on the Firm 50.

3377. We anticipated the opening of these -- you know, we agree with Ms. Reimer's(sic) assessment of the mid-continent, but we expected that premium to go away when the Enbridge and TransCanada expansions went in, but eventually it would be valuable in sort of the second half of the 10 years.

3378. And our view not only was based on the similar view to the mid-continent balances, but it's also you have supply push, which would be the mid-continent situation where you have the big world versus Alberta difference, but you also have demand pull.

3379. And our view is that the combination of China and India and other developing countries and Asia will be the largest part of the growth and, therefore, that was another factor in addition to the, you know, mid-continent balance that went into our decision. So that, you know, just adds to the view of what could happen going forward.

3380. **MS. LOZYNSKY:** Okay. Thank you.

3381. Now, my next set of questions relates to the volume risk that Trans Mountain states that it may face. Can you tell me to what extent you have choices in terms of where you sell your crude and what impacts those choices?

--- (A short pause/Courte pause)

3382. **MR. REIMER:** The question was with respect to the volume risk on Trans Mountain from a...?

3383. **MS. LOZYNSKY:** That's kind of the context. I will be looking for your

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views on the longer-term risks to Trans Mountain system stemming from incremental type pipeline takeaway capacity in the western Canadian sedimentary basin.

3384. But I was kind of asking, well, what are your -- do you have a lot of choice in terms of where you sell your crude?
3385. **MR. REIMER:** Yes, we do. And the way the market works, much crude is being transacted in the major Alberta hubs of Hardisty and Edmonton. That's just a transaction point.
3386. The crude is principally from there transported to what I would characterize as the primary markets Canada, PADD II, Chicago, now Wood River, through, you know, Enbridge's significantly large transportation network, Express pipeline, Bow River pipeline down into PADD IV, Keystone pipeline going into PADD II.
3387. So those are all options that we as a seller of crude have, as well as the refiner buyer also has as they buy in the trade hubs.
3388. Trans Mountain is one of those that we look at as well in terms of transact. We do business with the refiners in Washington State, you know, so at that point in time -- in today's world where there's apportionment, sometimes you're left with wherever you can get your barrels flowing.
3389. In a world that's much more -- we'd hoped to be much more stable than that, you would be looking at your preferred netback markets and that sort of thing.
3390. Market development has a role to play in that because market development enables you to have a portfolio. As one market may be better any given point in time than another, a more diversified approach allows you to have access to, you know, an inventory of different markets, all of which may be moving a little bit differently at a time.
3391. So that's why there are lots of options east, south, west. I think in time more options west are going to be required, as I talked earlier about the growth of production and the primary and markets being saturated.
3392. **MR. PROUDFOOT:** I would like to comment that just with respect to rates and risk certainly from U.S. Oil's perspective in the past apportionment represents a very significant risk to our security of supply, rate ability, ability to plan

and certainty.

3393. We are end users of products. We are not resellers of crude oil products. So we boil crude, so to speak, and we make a host of light oil products with which we market.
3394. With respect to alternatives, the niche, nature and the size configuration of our enterprise in Tacoma, we are more reliant on what I would consider short-haul smaller parcels of crude. We just don't have the physical infrastructure to start to look to other global markets with which to procure our crude.
3395. So this -- we don't have a -- we don't see a risk in terms of rates. We are a daily buyer, a daily purchaser of product and material coming down Trans Mountain.
3396. **MR. TYCHONICK:** I just wanted to add to Mr. Reimer's comments in regards to the options for moving Canadian crude as he described.
3397. As we've known, there's been a tremendous amount of change in the environment of moving crude oil from a regulatory perspective with, you know, line breaks. And when put in perspective, in the past when there was a line break it was very quickly resolved.
3398. The NEB approved it or the AUB approved it and the crude started flowing very quickly. Nowadays there's more scrutiny in getting the pipelines back in order.
3399. So although some of these options do exist, the global picture is there's so many new factors that have changed over the last number of years to make it very important to have other options such as the market development, as Paul said.
3400. But I just want to -- it is a changing environment. We're going to have ebbs and flows and disasters that we have to deal with. But it's not like it was a few years ago where it's easily correctable.
3401. It takes a long time to get these things back in order, and I think Trans Mountain is a perfect example with a restriction right now, which is, you know -- and also an impact of trying to get the barrels out of this marketplace.
3402. **MS. LOZYNSKY:** Thank you.

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3403. So would you agree that in the longer term Trans Mountain does face volume risk without this proposal?
3404. **MR. TYCHONICK:** I think absolutely, and the economics will determine where the barrel goes if the pipeline space is available.
3405. So I agree there will be a demand pull to the Gulf Coast. I agree that there's a demand pull to the Pacific. If Keystone XL goes through as approved, the market will begin to clear as much as it can into the Gulf Coast. So it opens up that trap as Mr. Dove talked about.
3406. The West Coast market then, is it the highest price market or not, that's the risk that Trans Mountain has; that's the risk that we have. So there's absolutely some risk in determining how the outlets of those barrels are going to flow to the highest markets.
3407. And one of the things that's, I think, an interesting point is that there's contract carriage on those other pipelines so with that being a sunk cost to those companies, they're typically going to utilize that space.
3408. So you know, I don't disagree with some of the comments made by Trans Mountain earlier about having some risk. And again, what I like about the TSA, as Deanna was saying, is it's a first step. You don't have to risk \$4 billion; we're risking just under 300 million, which is a lot of money anyway, and it's a long term.
3409. But it gives you the opportunity to allow Steve's market and the various companies around the world to test Canadian crude to see if they like it, and if they do, then they will come and support. That's the first step.
3410. **MR. DOVE:** In terms of selling the project, I had to prepare management for an interim period of losses. We anticipated that there would be several years when that expansion went to the mid-continent and to the Gulf Coast, is that it would not be an economic deal but overall that it would benefit.
3411. It's so difficult to predict. I mean, the futures market, back when we bid it, was \$1.60 and if you took the arbitrage, the WTI spread that was predicted for October 2011 during that period in October of 2010, it would have said that the differential would have been about a dollar or somewhere in that order of magnitude.
3412. So things can change dramatically, and we don't see this as anything but a

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risk that we're taking to commit for 10 years.

3413. **MS. ZUMWALT:** I'll keep it brief.

3414. We do have choice. We do ship on competing systems, clearly. Today we may not like the price we get on those competing systems. There are projects announced that would offer competition for sure to Trans Mountain, so yes, I think they do have volume risk.

3415. In particular, they allow today access to tide water, which is something that certainly we're looking to get access to because it is a stronger price, it is -- you know, gets you access to global pricing. So yeah, I think their assumption that they are going to have competition and potentially volume risk with projects being announced is a fair one.

3416. **MS. LOZYNSKY:** Okay. Now, I think you might have addressed this with the Alberta Department of Energy, but I'm just going to double check. And maybe this could be turned up. It's NEB -- it's Trans Mountain's response to NEB 1.2, and it's page 4 of 41 and it's the answer to Part B. It should be Exhibit A2.

--- (A short pause/Courte pause)

3417. **MS. LOZYNSKY:** I think the answer is on 4 of 41. So it's just that first paragraph there. It says:

"Market prices for crude oil in Alberta are a function of supply and demand. To the extent that a portion of the available supply is dedicated to offshore consumption and away from existing dispositions, it must be helpful to other producers. The lessening of competitors selling crude oil to traditional markets to the east or south is likely to be favourable to all producers in securing higher prices."

3418. So would you agree that that's a benefit?

3419. **MR. REIMER:** Yes. Could I go on?

3420. As I said earlier, I think the certainty of that capacity being available adds the -- with the knowledge that takes it out of the marketplace, that clears the market.

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3421. There was some discussion yesterday about the market clearing in any event because the capacity is available. Well, that -- in a perfect world, sure, but when you're transacting an unknown capacity off the dock, unknown quality, and you're transacting with business partners that -- and refiner buyers that have the flexibility to live in that sort of uncertain world, you actually don't know whether that barrel is going to clear the market.

3422. It's only through the certainty afforded firm service that you know that those barrels are going to go off the market, so that's a really -- and I was talking with Mr. King earlier about those components that add to the value of others other than the firm service shippers. This is a key component to that.

3423. In the current uncertain world, a refiner/buyer may buy a lot of crude, it might take it off the dock. He might supply his sources from other tide water cargos that they may have. They've got lots of choices and they'll optimize their slate, and that's their business and that's great.

3424. But that lack of certainty while you're going through the trade month doesn't take those barrels out of the market. The certainty of these commitments do take those barrels out of the market.

3425. **MS. LOZYNSKY:** Okay. Now, we had some discussions about the advance nomination process that currently exist. We had those discussions with Trans Mountain yesterday. And we had asked what the harm would be of leaving -- having that advanced nomination process maintained.

3426. And there was suggestion from Trans Mountain that it was fairly important that the nominations occur on the same date. And there was some discussion about whether -- you know, one option would be that the firm service shippers would nominate two days in advance, but Mr. Hinger recognized that that might not be a popular option with the firm service shippers.

3427. And if you want the reference, it's transcript Volume 2, paragraph 2496.

--- (A short pause/Courte pause)

3428. **MS. LOZYNSKY:** So I think you probably know what my question will be. It's how would it impact the firm service shippers to nominate two days in advance consistent with the current practice?

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3429. **MR. TYCHONICK:** I think the -- I'll take this one on. I think the question of nominating two days in advance is well understood, and we're in that environment today. And Mr. Hinger explained, I thought quite well, how the market will rationalize itself.
3430. If you look at the balancing position, it will give us an opportunity all to be on the same time frame to buy and sell. We have a period of time to do that as opposed to beforehand. You know, we talked a little bit about this secondary market and other markets. Well, the two-day dock nom creates a secondary market after the fact, whether you're a winner or a loser.
3431. So in this particular case here, you're providing certainty to the dock, so that takes away some of that. So I think to have the spot uncommitted shipper, the 25 a day -- or 27 a day that's being allocated -- 25, I think it is -- has to -- I think has to be on the same level field.
3432. So I do agree with Mr. Hinger on that, and I also point out that I know Mr. Hinger deals with a lot of nominations, so he likes it better that way.
3433. But no, from our standpoint, we agree with the new process.
3434. **MS. LOZYNSKY:** And sorry, is there -- what was the issue again with moving it two days back rather than still having everybody on the same day?
3435. **MR. TYCHONICK:** The issue?
3436. **MS. LOZYNSKY:** M'hm.
3437. **MR. TYCHONICK:** Yeah. No, I don't believe that there's an issue. It's more of a fair playing field for a timeline, so all the buyers and sellers in the open system know that from a timeline perspective that they have to have their nominations in at a specific period of time based on the COLC calendar and, therefore, you're going to have everyone treated equally from a nomination perspective.
3438. Does that answer your question?
3439. **MS. LOZYNSKY:** I think so. Now, he mentioned that -- he said in that paragraph, I guess, our expectation is that that period before nomination day in industry is really trading week and there's a lot of business done. And really, what

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that does is it takes two days away from them during trading week, and so our expectation is that, you know, that they wouldn't like that very much.

3440. Is that accurate?

3441. **MR. TYCHONICK:** That's accurate. The reason is, is the market changes, right, every single minute of the day. WTI is moving around, differentials are moving around, right. So if you have everyone in the entire Canadian industry nominating at the same time, so all the pipeline nominations are equal footing in that particular case. So I agree with what he said there.

3442. It gives the traders more time to analyze the market, and things happen in two days, so this way you put it all at the same period of time and they'll be able to evaluate it at that time. It gives them more time to do their work.

3443. **MS. LOZYNSKY:** And so there's a problem with the current system, the advanced nomination process. That would be a problem with the current system as well?

3444. **MR. TYCHONICK:** I think the current system is a system of uncertainty. In the environment of uncertainty, you probably have -- gives you some optionalities to find other options at that particular time. In this environment of firm service, you're going to have the opportunities that are at the same period of time.

3445. I don't see it as a problem today given the current structure today. That's my view.

3446. Any other thoughts from the panel here?

3447. **MS. LOZYNSKY:** Well, thank you, panel. Those are all of my questions.

3448. **THE CHAIRPERSON:** Thank you, Ms. Lozynsky.

3449. Ms. Hales, do you have any questions?

3450. We're ready when you are.

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--- EXAMINATION BY/INTERROGATOIRE PAR MS. HALES:

3451. **MS. HALES:** Hello, panel. As Ms. Lozynsky mentioned, my name is Carol Hales, and I have a few more questions for you on behalf of the Board and Board staff. It should be fairly quick, though.

3452. So first I would like to spend a few minutes canvassing your views on some potential conditions that the Board may consider imposing on any approval granted.

3453. And as you may be aware, these conditions were all put to Trans Mountain yesterday, and they have provided their views on them. So I'll pose these to the panel generally and would encourage anyone to jump in as you see fit.

3454. Mr. Reimer and others suggested this morning that there is a general benefit to producers and shippers that would flow from the use of the firm service fees towards expansion projects.

3455. So if the Board were to include a condition on any approval granted that the firm service fees could not be spent on a project until that project had received regulatory approval, how would that impact the firm service shippers; if at all?

--- (A short pause/Courte pause)

3456. **MS. ZUMWALT:** I guess our view on placing that condition on Trans Mountain is it would just slow activities down, and certainly our view is that this is a first step towards west coast expansion. It's something we'd like to have happen, potentially sooner rather than later. So adding that additional approval in would slow things down, for sure.

3457. **MS. HALES:** So any delay could be harmful to your plan?

3458. **MS. ZUMWALT:** In our mind, yes.

3459. **MS. HALES:** Okay. And if the Board were to include a condition on any approval granted that a formal dispute mechanism be incorporated into the tariff to address disputes regarding the use of the firm service fee, how would that impact firm service shippers; if at all?

--- (A short pause/Courte pause)

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3460. **MR. REIMER:** I don't think we had -- saw any opposition to that here.

3461. **MS. HALES:** Thank you.

3462. So I understand that in Ms. Zumwalt's point if Trans Mountain's plans for expansion or expenditures on enhanced operations were delayed in any way that could -- that would cause an issue -- as a result of a condition imposed by the Board, that would negatively impact firm service shippers simply because you'd like to see expansion sooner rather than later?

3463. **MS. ZUMWALT:** That's correct.

3464. **MS. HALES:** Okay. And if Trans Mountain does not spend the firm service fees in the customer contribution account within a reasonable amount of time, for example, market circumstances change that would make it not prudent to pursue expansion, what is the firm service shippers' view on what should happen to the firm service fees that have been collected?

--- (A short pause/Courte pause)

3465. **MR. REIMER:** If I recall the dialogue yesterday, I think there was some willingness on the part of Trans Mountain to explore that condition, and we would have nothing else to add to that, if I recall it correctly.

3466. **MS. HALES:** Okay. I think the question was, though, what should happen to the firm service fees that have been collected if they're not used within a reasonable amount of time.

3467. So what would be your view on what should then happen to the funds that are sitting in that customer contribution liability account?

--- (A short pause/Courte pause)

3468. **MR. REIMER:** Do you have a reference to the Trans Mountain response to that?

3469. **MS. HALES:** To Trans Mountain's view on that, I can tell you I don't. I think their general view, if I can paraphrase, was that they didn't anticipate that there would be any fees that would remain within this account and my recollection was

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they didn't have any views on -- it should stay there, I think, was their views.

3470. One moment.

3471. So you have no independent view from what Trans Mountain think on what should happen to these fees?

3472. **MR. REIMER:** I am just trying to recall in my own mind whether or not the exchange that I'd heard yesterday was the same one that you're referencing right now; that's all.

3473. **MS. HALES:** I probably asked it a little different with them.

3474. Maybe while everyone's looking for that we could move to the next question and then return to that in a moment, if that would be okay.

3475. And I think this issue might have been touched on in response to a question from Ms. Lozynsky this morning, but if the Board were to require that the refund of the firm service fees to all shippers in a manner similar to what's the treatment typically right now with the bid premium, in your view, would this have any impact on shippers support for a future expansion?

3476. **MR. REIMER:** I think the short answer is, yes, insignificantly. To be clear, I think, just to make sure that my responses from earlier was correct, but we see that the firm service fees and the use of those fees towards the study works and feasibility study works for expansion, we see that as integral and important and a fundamental principle of the transportation service agreement that we signed up mainly because the market development that we're undertaking is really a first step into that market.

3477. We need that study work -- once our market development work is underway we need that study work completed in order to make an informed decision of whether or not expansion is a reasonable and rational thing for Trans Mountain to undertake.

3478. Currently, the bid premiums go back into benefiting current shippers. It's kind of interesting the land shippers -- sorry, the land shippers are enjoying a discounted crude price and low tolls as a result of the current bid premiums being -- so they have no motivation to expand the system. They like that world. I can imagine that would be a great place to be.

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3479. Our preference is to see what it looks like off the dock and to get the expansion. So it's really quite important to us to see that those firm service fees get contributed to the expansion study works so that we can make informed decisions in the future about what an expansion -- that's a key component part.
3480. And if I -- and maybe it goes back to your earlier question; if however after all is said and done the fees that have been collected are not getting spent, no expansion plans are forthcoming and nothing is going to happen and you know it's all kind of died, I think that was the response of Trans Mountain.
3481. They said over a long period of time, if they haven't used the funds and there's no projection that they would use the funds, I think they were willing to come back to the Board and seek what -- what do we do about it. That's probably about right.
3482. **MS. HALES:** And you take no issue with that; that seems like a reasonable approach to you?
3483. **MR. REIMER:** I mean, you're talking about a scenario where the study works have been done and the expansion hasn't proceeded and, you know, we don't know what the future is going to look like.
3484. We made 10-year commitments and it could be that in some period of time, it doesn't make any sense for us to be doing what we're doing, and the expansion study works are gone, yet they're still kind of collecting our fees because we're committed to it, 10 years. Something has got to be done with the money, yeah, at that point in time.
3485. **MR. TYCHONICK:** Can I just add to Paul's comment? Sorry to interrupt you.
3486. **MR. HALES:** Of course. No, not at all.
3487. **MS. TYCHONICK:** I know at Astra we discussed that very clearly and, at the end of the day, we believe that Trans Mountain's intentions are the same as ours, to look to the future.
3488. So we didn't have an issue if the funds were not spent. It was the intention that the funds were going to be spent towards that end result and this makes a lot of

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sense to us. So that's why we're fine with the contract.

3489. **MS. HALES:** And if I can just quickly confirm one point. Mr. Reimer, I heard from you at the outset of your comments, in your views, absent the firm service fees, that there's a lesser chance that these feasibility studies and whatnot for expansion will happen in a timely manner, particularly be undertaken?

3490. **MR. REIMER:** I think Ms. Zumwalt addressed that as well, but I would support that comment. Why is that? Because our industry works on the premise that there's sort of a founder shipper support group that a proponent might look to, to help funds things in advance of an application even being put forward doing some engineering studies, feasibility studies long before an application can be submitted and approved.

3491. So if we are waiting for an application to be submitted and approved, you could end up with kind of a perverse outcome where we're paying fees to do that work, yet at the same time they can't use that money to do that work so now we have to backstop it in a different way to do that work, and all of a sudden we've paid twice for the same study.

3492. And I know that that's not logical, but you can see where a lot of work needs to be done prior to an application being submitted and ultimately approved.

3493. And it's that work that, in our industry, really needs to get rolling with the help of, in this case, the firm service fees.

3494. **MS. HALES:** Thank you that's helpful.

3495. So my follow up question, Ms. Zumwalt implied that "integrateds" have an advantage under the current system over producers.

3496. Could you discuss that a little further?

3497. **MS. ZUMWALT:** I think just simply the "integrateds" in many cases have both production control moving that production to their refineries. When you look in particular at the land based refiners that are connected to the Trans Mountain system today, they can pick up significantly discounted Canadian crude, refine that crude, and then sell it into a global market.

3498. So they have economics that as a Canadian producer we just can't access

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today and we can't compete with. And right now, the way the bid premiums work is we're basically bidding or competing based on that global market, but we just don't have the economics to support it. So we just find month in and month out we don't win the cargos and so it's just a real challenge for us to compete with them.

3499. So we do believe that having this firm service offering puts us on a little bit more of an equal footing and gives us some of the flexibility and options that they have today.

3500. **MR. TYCHONICK:** I just wanted to add to Deanna's comment. We talked about incentives and integrations. If you take a simple example that you're buying discounted crude. Your price is lower on your cost base.

3501. You are then getting subsidized to move that crude to your refinery and the refinery is selling that out. So not only you're getting the benefit of a trapped barrel, you're getting the benefit of a subsidy on the pipeline.

3502. So I think from a fairness perspective, that's what the TSA is trying to address. Again, what I said before, not that we're all going to feel some pain but at least that it's balanced. So I think from that approach it's advantage somewhere else.

3503. **MS. HALES:** Great. Thank you.

3504. **MR. PROUDFOOT:** I would like to just add and comment on what Deanna said. As a refiner and competing with the other refiners who are taking it on ahead of pipe and delivering it down off Sumas, they are certainly collecting the arbitrage on what is considered today to be a relatively cheap barrel of crude and running it, refining it, and selling the end products of what is largely based on a world market or predicated on other markets just not TI.

3505. So again, we see that and the one thing I would like to add is that markets, like many things, go up and down. Today, that's an exacerbated situation where everybody who is connected or who has the ability to run what we consider to be cheap Canadian crude will run as much as they can get.

3506. On a go-forward basis, there have been times, and I'm quite sure that we'll see those times again, where Canadian crude may not be the most viable choice, there may be other alternatives, other heavys, new field productions found globally or on a world market that may present themselves to have a better refining value than some other Canadian crude.

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3507. So, you know, I believe you would see many of the U.S. refiners that do in PADD II, some PADD IV and then a few in PADD V, that they will continue to exploit when the market arbitrage is significant as it is now to capture that margin.

3508. I would say that on a go-forward basis that is not guaranteed to be there and it's not something that they could lock in or risk manage well down the future. So today it looks great, in a year or two it may look very different.

3509. **MS. HALES:** Okay, I think even absent our transcript reference my earlier question was answered, so unless anyone's got any other points they want to make on the return of a firm service fee, those are my questions.

3510. **THE CHAIRPERSON:** Thank you, Ms. Hales.

3511. That leaves me; my fellow Panel have no questions for you.

--- EXAMINATION BY/INTERROGATOIRE PAR THE CHAIRPERSON:

3512. **THE CHAIRPERSON:** I just have one area that I'd like to discuss further with you. And this is related to the customer contribution, to what you do with the firm service fees.

3513. If the Board were to agree with you that the firm service fees would not go in towards the revenue requirement, if the Board was to agree with you that it would be used as you had put it, studies or preliminary work, whatever it is TMX needs to do for the expansion, what would be your views with respect to the priority to the capacity, to the added capacity?

3514. What would be your views if the Board were to say, okay, this money would go towards the contribution for studies but then if and when TMX expands there will be an open season where everybody, all players, would have equal opportunity to contract for the extra capacity?

3515. I wonder if you can discuss that, would that be in your views as a deal-breaker? I heard you, Mr. Reimer, saying in our industry the industry approach is that, you know, there's going to be -- there's some sort of funding for things of this nature and I heard you talk about this would be as a first step, moving forward.

3516. And if you remember the discussion I had with Trans Mountain yesterday,

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Mr. Reimer, I've said, well at that point when an expansion is contemplated we will look at the industry-wide and see what the need is and then we will plan accordingly.

3517. I wonder if you can comment on this. I'm interested in your views and if anybody would like to participate, I'm all ears.

--- (A short pause/Courte pause)

3518. **MR. REIMER:** With reference -- Madam Chair, with reference to the industry practice of -- I'll use the word founder shippers or support groups, they tend to get involved in a project like this with some sort of an opportunity to make sure that their participation -- their risked participation has some reward at the end of it and that would quite often come in the form of, you know, an option on certain capacity, if you will.

3519. So I think that the structure of the TSA is completely consistent with what I would have expected in sort of an industry practice with respect to supporting or, you know, funding a project. Then if it looks good and if it's a go-ahead then you have an access to -- an option for access into that capacity.

3520. As I mentioned, I think, earlier, the best bang for the buck here is TMX-2 and 3. That 700,000 barrels a day of total capacity through the system -- our options aggregate up to I think it's 108 which is a small -- small portion of the full 700, which leaves a lot of capacity available within an open season to be picked up by other potential customers, producers, shippers, all of whom will enjoy the results of the market development work that we will be undertaking as firm service shippers during the period of time of our firm service contract until the expansion.

3521. So we're out ahead of the curve on this one, we're taking some risk in doing it, we're making long-term commitments and yeah, I think it's a very material aspect of the transportation.

3522. I think the step-up rights are a very material aspect of the transportation service agreement. If they were to be removed I think we would really need to step back and revisit the TSA to determine whether or not this material change is -- how we proceed with such a material change to the TSA.

3523. **MS. ZUMWALT:** Our views would be very similar to Mr. Reimer's. We do view the expansion rights as an intricate part of this application. Opening up that access to the west coast and, you know, being forerunners in that we do view

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that, having that option to those expansion rates is very important. So we too would have to seriously take a hard look at what we would do if that modification were made.

3524. **MR. TYCHONICK:** Just one comment that through the open season process there was a full consultation done and as panel members indicated, you know, everyone had an opportunity. You know, our companies and our producer, we evaluate it very -- very strongly and it's an important part of their future. So I think everyone had a chance to participate.

3525. **THE CHAIRPERSON:** I understand everyone has a chance but you have a priority access which means that your portion goes first before -- if you call on it, before it is offered to somebody else.

3526. And I'm still remembering what you had said, Mr. Tychonick, with respect to what value do you put on the access to the capacity and you had said if it is a small expansion it's probably zero value and then it increases depending on the size of the expansion.

3527. So I read the documents, the evidence with interest and then I considered the average firm service fee that you are paying over and above the tolls, which is in the order of \$1.45, compare it to the bidding premium which is significantly high and compared to the value of having assurance of a capacity.

3528. It was very hard of course because nothing in the evidence was clear as to how much you put value on the access to the future capacity versus the assurance of capacity. And mind you, the access to future capacity is not a for sure thing because TMX may not even come forward or maybe an expansion is not approved; there's too many ifs there.

3529. So I wonder if you can help me out, how much weight you put on what you had signed, the TSA to the firm access versus the prospect of the option on the expansion?

3530. **MR. TYCHONICK:** Thank you.

3531. Just to go back, if my previous comment was that there is zero value, if it's a small expansion, I misspoke. There's not zero value here with certainty and the shift of volume to the dock. There's absolute value to the Canadian producers as we talked about earlier.

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3532. The bid average of \$1.45, it is correct, you know, based on the aggregate amount. The time that we put that into place, the historical averages were much, much lower. As we talked about, the marketplace today has changed immensely. It could have easily changed the opposite direction and we'd still be at the hearing here today.
3533. The value of the future capacity is about the market development. I truly believe that to make a project go you have to support it. I agree with Paul's comments that somebody has to step up, and Astra has been at the dock since the 1980s. We understand it; we take risk on the water.
3534. Many of the producers in Canada don't, so we feel that we bring a service to them and the service we bring to them is we bring them close to the market. That's why we're here. We're willing to, you know, put up our risk in the value of the future of that clause. I agree with my other panel members on it. It's a material component.
3535. I can't specify in a monetary term what that value means today and I agree with you, as you indicated, we don't know if expansion's going to go through. We don't know if Trans Mountain's going to spend all the money, but this feels right. It's the right step.
3536. And I agree with what Paul said earlier that, you know, the example of Pegasus is similar. Dip your toe in the water, review it, does it make sense, and then move forward. In the meantime, the markets will rationalize. We could be sitting here, you know, come January and things could be actually different.
3537. So I'm not sure how to value it in the future, but it's an important part of the whole growth strategy.
3538. Did I answer the question?
3539. **THE CHAIRPERSON:** Yes, you did answer.
3540. **MR. TYCHONICK:** Thank you.
3541. **MR. DOVE:** We did not put a price on the option. For us, the biggest concern is, you know, getting the equal access and reliability so that we can make plans going forward.

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3542. The difference for us between base-loading crudes and buying spot availability at the last moment is a big difference because our demand and refining capacity is expected to expand quite a bit in the future.
3543. So that was the greater portion of the amount that we were committing, not just on the premium, but the financial liability for 10 years committing the total amount. So just in terms of proportion, I would say, you know, for us the greater aspect was the other aspects.
3544. We'd have to look at it as a commercial agreement with Trans Mountain and, therefore, any change to that commercial agreement would have to be decided whether -- at the time whether it's a deal breaker or not a deal breaker, but I'm just trying to be helpful in terms of not value, but in terms of the percentage. It was a smaller percentage compared to the other aspects for PetroChina alone.
3545. **THE CHAIRPERSON:** And you have been helpful, Mr. Dove, because I heard from -- the interesting part about this panel is that you've got representation from the market and as well as the producers, and the message was clear from both of you importance of security of supply for those who want to use the product as well as importance of access to market.
3546. And so I was trying to have a better understanding of the other aspects of the TSA, the other facets to it.
3547. And any other comments from any of the members, I would welcome.
3548. **MS. ZUMWALT:** We certainly did place value in our bid on all the various components of the TSA, so we certainly do value all the aspects of it.
3549. I mean, we aren't just looking at the next 10 years; we're looking out beyond that. We have asset in Canada that is going to grow, so having that access to diverse markets and outside of our traditional inland North American markets was very important to us, so we did place value on it. I don't recall what the split would have been at the time, but we certainly placed value on all the components of it.
3550. **MR. PROUDFOOT:** Certainly from a perspective of U.S. Oil as a refiner, the value we placed on it -- again, to bring up a key point to us is just the ongoing security of supply. The costs of not being able to procure reliable, rateable crude for refinery are -- it kind of puts you out of business if you don't have access to

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a current, rateable supply of crude oil.

3551. So as we were looking at the TSA, we certainly looked at it from an eyes-wide-open perspective. We also did recognize this as a potential for the market and for the producers among this panel to grow that business and to provide different grades and future grades of crude oil with which -- could be brought to market with which we could evaluate to continue to run as an end user to make product and to maintain the rateability and structure and planning of our business.

3552. **THE CHAIRPERSON:** I have no further questions, so I would like to thank the panel very much for their contribution.

3553. And is there any re-direct?

3554. **MR. LANGEN:** No, Madam Chair, no re-direct.

3555. **THE CHAIRPERSON:** Well, thank you very much.

3556. With that, the panel is excused.

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

3557. **THE CHAIRPERSON:** Given the time, which is very close to lunch break, I wonder if we will take our lunch break and come back at one o'clock with a brand new panel.

3558. Thank you.

--- Upon recessing at 11:49 a.m./L'audience est suspendue à 11h49

--- Upon resuming at 1:02 p.m./L'audience est reprise à 13h02

3559. **THE CHAIRPERSON:** Bon après-midi. Good afternoon, everyone.

3560. Ms. Buchinski?

3561. **MS. BUCHINSKI:** Good afternoon, Panel.

3562. As we had indicated earlier this morning, we do have a couple of filings that we would like to put on the record, if we could, Madam Chair.

3563. The first one is an August 24th, 2011 letter that just identifies some transcript changes. And we did include in here as well two more minor transcript changes that actually were the words of Mr. McLarty, just to confirm and clarify the transcript references.

3564. I'm not sure that he's going to be here this afternoon. We had looked around for him this morning. But there's two paragraphs. He can have a look at them; if he's got any concern, we can chat about it but they're pretty minor in corrections to the transcript. They're more like typos.

3565. So could I have an exhibit number for that, please?

3566. **THE CHAIRPERSON:** Yes, please.

3567. **THE REGULATORY OFFICER:** That will be Exhibit B-17.

--- EXHIBIT NO/PIÈCE No. B-17:

Letter from Trans Mountain Pipeline ULC dated August 24, 2011 which identifies some minor transcript changes

3568. **MS. BUCHINSKI:** And then, Madam Chair, over the testimony period of the Trans Mountain panel, we did have a series of five undertakings, and we have responses to all five of those that we will submit in writing given that the panel has now stepped down. So we'd like to submit those as exhibits in this proceeding.

3569. We've also specifically provided a copy of the undertaking to each counsel to which the undertaking was given; so they've got a copy and I'm sure if they have any questions they'll follow up.

3570. **THE CHAIRPERSON:** So could we define?

3571. **MS. BUCHINSKI:** We do have a -- there's a cover letter and then five attachments, so I'm not sure how you'd like to proceed in terms of marking those as exhibits.

3572. **THE CHAIRPERSON:** We'll just do them as one exhibit.

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3573. **THE REGULATORY OFFICER:** That will be Exhibit B-18.

--- **EXHIBIT NO./PIÈCE No. B-18:**

Cover letter with five attachments; responses to Undertakings U-1 to U-5

3574. **MS. BUCHINSKI:** And we do have copies as well for the Board. So I'm not sure if you'd like me to hand those to the Hearing Officer.

3575. **THE CHAIRPERSON:** Yes, please.

3576. **MS. BUCHINSKI:** Thank you, Madam Chair. That's all we have.

3577. **THE CHAIRPERSON:** Thank you.

3578. Mr. Bergner, we're ready for your panel.

3579. **MR. BERGNER:** Good afternoon. Bon après-midi, Madam Chair and Board Members.

3580. This afternoon it is my pleasure to introduce the Chevron witness panel. If you'll permit a brief introduction before the witnesses are sworn.

3581. Seated furthest from the Panel is Mr. Geoffrey McCutcheon, who is Trading Manager at Chevron Resources Canada, and will speak to -- primarily to Chevron's role as a dock shipper.

3582. Seated in the centre of the panel is Mr. Paul Gray, who is Manager of Value Chain Optimization at the Burnaby Refinery for Chevron Canada Limited.

3583. Apparently they've heard enough of me already.

3584. Are we back?

3585. **THE CHAIRPERSON:** I guarantee you it wasn't intentional.

--- (Laughter/Rires)

3586. **MR. BERGNER:** I believe we're back online; so I'll continue.

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3587. Mr. Paul Gray, again, Manager of Value Chain Optimization at the Burnaby Refinery, owned by Chevron Canada Limited, and will speak primarily to Chevron's role as a land shipper.
3588. Seated closest to the Panel is Dr. J. Stephen Gaske of Concentric Energy Advisors, who has filed expert testimony on behalf of Chevron in these proceedings.
3589. And if the witnesses could be sworn, please.

PAUL GRAY: Sworn

GEOFF McCUTCHEON: Sworn

J. STEPHEN GASKE: Sworn

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

3590. **MR. BERGNER:** I will very quickly take them through their direct evidence.
3591. Mr. McCutcheon, we'll start with you. Do you have in front of you Exhibit C5-5c, which is identified as Evidence of Chevron Canada Resources, Geoff McCutcheon?
3592. **MR. McCUTCHEON:** Yes.
3593. **MR. BERGNER:** And do you also have in front of you Exhibit C5-6, which is the responses to information requests -- which contain the responses to information requests on your evidence?
3594. **MR. McCUTCHEON:** Yes.
3595. **MR. BERGNER:** And do you have any changes or additions you would like to make to that evidence?
3596. **MR. McCUTCHEON:** No.
3597. **MR. BERGNER:** And do you accept and adopt those exhibits as your sworn evidence in this proceeding?
3598. **MR. McCUTCHEON:** Yes, I do.

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3599. **MR. BERGNER:** Thank you.
3600. Mr. Gray, do you have in front of you Exhibit C5-5b?
3601. **MR. GRAY:** I do.
3602. **MR. BERGNER:** Which is the -- yes, the evidence of Chevron Canada Limited, Paul Gray.
3603. **MR. GRAY:** Yes.
3604. **MR. BERGNER:** And Exhibit C5-6, which is the information responses containing the responses to IRs on your evidence?
3605. **MR. GRAY:** Yes, I do.
3606. **MR. BERGNER:** And do you have any changes or additions you would like to make to those submissions?
3607. **MR. GRAY:** I have one correction. At the top of page 6 of my evidence, the first line, I'd like to strike the last section, the words "*when TMX-1 went into service*".
3608. **MR. BERGNER:** And so for clarity, this is Exhibit C5-5b.
3609. **MR. GRAY:** That's correct.
3610. **MR. BERGNER:** And the reference was the top of page 6.
3611. **MR. GRAY:** Yes, the top of page 6, line 1 and line 2, where it continues on.
3612. **MR. BERGNER:** That is clear.
3613. And with that change, do you accept and adopt these exhibits as your sworn evidence in this proceeding?
3614. **MR. GRAY:** I do.
3615. **MR. BERGNER:** Thank you.

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3616. Dr. Gaske, do you have in front of you Exhibit C5-5d, which is identified as the Prepared Direct Testimony of J. Stephen Gaske?
3617. **DR. GASKE:** Yes, I do.
3618. **MR. BERGNER:** And do you also have in front of you Exhibit C5-6, the information request responses which include the responses to IRs on your evidence?
3619. **DR. GASKE:** Yes, I do.
3620. **MR. BERGNER:** And do you accept and adopt those submissions as your sworn evidence in this proceeding?
3621. **DR. GASKE:** Yes.
3622. **MR. BERGNER:** And I have a few extra questions for you.
3623. Attached as Attachment A to Exhibit C5-5d, is that your curriculum vitae?
3624. **DR. GASKE:** Yes, it is.
3625. **MR. BERGNER:** And can I ask, have you ever given expert testimony previously before the National Energy Board or any other regulatory tribunal, be it filed evidence or oral testimony?
3626. **DR. GASKE:** I've filed testimony in more than 80 proceedings before many different tribunals. I have filed testimony before the NEB on one earlier occasion, and that was about two years ago, a NOVA Gas Transmission Limited case.
3627. **MR. BERGNER:** And just for the sake of clarity, were you qualified to give expert opinion in those other proceedings?
3628. **DR. GASKE:** Yes, I was.
3629. **MR. BERGNER:** Madam Chair, I would request that Dr. Gaske be qualified to give expert opinion evidence in this proceeding.
3630. **THE CHAIRPERSON:** Board members have read his CV and, yes, we sure do.

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3631. **MR. BERGNER:** Thank you.

3632. And just before I turn the panel over for cross-examination, if I may make one logistical note, and I had the opportunity to speak with Board counsel about this matter.

3633. The time estimates seem to anticipate that we may be finished today, but on the chance that we're not, I just wanted to note for the benefit of all parties and for the Board that Dr. Gaske has an overseas commitment that will require him to leave the hearing room no later than 11:00 or 11:30 tomorrow.

3634. So I don't think we're going to have a timing problem, but I just wanted to make that note in case things go somewhat longer than expected.

3635. **THE CHAIRPERSON:** We're sitting to midnight.

--- (Laughter/Rires)

3636. **MR. BERGNER:** The Chevron witnesses have personally assured me they'd be delighted to stay for as long as this takes.

3637. So with that out of the way, this panel is available for cross-examination.

3638. **THE CHAIRPERSON:** Thank you, sir.

3639. Trans Mountain counsel?

3640. **MR. KEOUGH:** Madam Chair, I do have some questions, but I actually think I get to go last in the batting order.

3641. **THE CHAIRPERSON:** I was following the sheet here in front of me. Pardon me.

3642. **MR. KEOUGH:** Thank you.

3643. **THE CHAIRPERSON:** So would that be the firm service shippers? And I wasn't going to guess between Mr. Davies and Mr. Langen this time; so Mr. Davies is approaching.

3644. Please proceed.

3645. **MR. DAVIES:** Thank you very much.

--- EXAMINATION BY/INTERROGATOIRE PAR MR. DAVIES:

3646. **MR. DAVIES:** Good afternoon, gentlemen. My name is Don Davies, and I have a few questions for you on behalf of the firm service shippers.

3647. Dr. Gaske, we've met before. You're looking well. Life must be good.

3648. **DR. GASKE:** And you also.

3649. **MR. DAVIES:** Life is good.

3650. So this is the first time that you have testified in respect of a Canadian oil pipeline. Is that so?

3651. **DR. GASKE:** Yes, this is the first Canadian case.

3652. **MR. DAVIES:** And, as I understand it, you were retained to prepare evidence with respect to this Trans Mountain application at the end of May 2011?

3653. **DR. GASKE:** That's correct.

3654. **MR. DAVIES:** And at the time that you were retained, how familiar were you with Canadian oil pipelines in general and with the Trans Mountain oil pipeline in particular?

3655. **DR. GASKE:** For many years I've had experience related to oil pipelines throughout North America. I've worked on several projects related to cross-border matters. I've worked on a great many gas pipelines also, so I had familiarity with Canadian regulation of oil pipelines.

3656. Last year I worked -- or I provided advice to attorneys for Chevron with respect to some matters that gave me familiarity with the Trans Mountain pipeline.

3657. **MR. DAVIES:** At the time -- or prior to the time that you were retained, had you studied the tariffs of Canadian oil pipelines?

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3658. **DR. GASKE:** I had looked at a number of them in conjunction with various work I've done through the years, yes.
3659. **MR. DAVIES:** And had you read any of the decisions relating to the tariffs of Canadian oil pipelines?
3660. **DR. GASKE:** Some decisions through the years, yes.
3661. **MR. DAVIES:** Now, sir, when I reviewed your June 29th, 2011 written evidence, I saw at least four references to "captive land shippers", so I take it that when you were preparing your evidence, you were of the view that there are refineries that are captive to the Trans Mountain pipeline system. Is that right?
3662. **DR. GASKE:** It was my understanding that there are refineries that have the characteristics of captive shippers, yes.
3663. **MR. DAVIES:** And when you were preparing your evidence, Dr. Gaske, which specific refineries did you consider to be captive to the Trans Mountain pipeline system?
3664. **DR. GASKE:** Well, as a general matter, I think there are a number of refineries that are dependent on the system. The only one that I had detailed information on was the Chevron pipeline -- I'm sorry, the Burnaby refinery owned by Chevron.
3665. **MR. DAVIES:** And if we could turn up, please, Exhibit C5-6b, which is your response to NEB Information Request -- and your response to NEB Information Request 1.3. It's at Adobe page 4.
3666. And Dr. Gaske, you prepared this response?
3667. **DR. GASKE:** Yes, I did.
3668. **MR. DAVIES:** And in 1.3(a), you list five refineries that use the Trans Mountain system, right?
3669. **DR. GASKE:** Yes.
3670. **MR. DAVIES:** And in (b), you essentially tell us that you don't know

whether any of the five is captive to the Trans Mountain system or not, right?

3671. **DR. GASKE:** Fully captive, no.

3672. **MR. DAVIES:** And in (b), in the second sentence, you state, and I quote:

*"The extent to which customers subject to market power are
'captive' customers is a matter of degree that depends on the
availability of economical alternatives."*

3673. Are you telling us that if a customer has economic alternatives to the use
of the Trans Mountain pipeline that customer is not captive to the Trans Mountain
pipeline?

3674. **DR. GASKE:** It depends on how economical those alternatives are.

3675. In the case of Chevron, for example, I know that they've suffered from
apportionment on the Trans Mountain system, and yet that is their only source of
supply. So they have not availed themselves of any other alternative. To my mind,
that's characteristic of a captive customer.

3676. **MR. DAVIES:** What about with respect to the four Washington State
refineries?

3677. **DR. GASKE:** I have not studied them.

3678. **MR. DAVIES:** Mr. Gray, in your evidence, Exhibit C5-5b -- and I'm
looking at Adobe page 7 in your response to Answer 17.

3679. **MR. GRAY:** Yes, I have it in front of me.

3680. **MR. DAVIES:** So I think if it's -- can you turn to Adobe page 7, please?

--- (A short pause/Courte pause)

3681. **MR. DAVIES:** C5-5b. It's Mr. Gray's evidence at A-17. Yeah, if you
could scroll down, please.

3682. There we go. Thank you.

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3683. Mr. Gray, you say in the first two sentences, and I quote:

“Washington State refiners (unlike CCL) can source their crude from either the Trans Mountain pipeline or from marine deliveries, including deliveries of Alaskan Northern slope (A&S) crude. Their choice appears to be dictated by market availability and relative price.” (As read)

3684. And I’ll end the quote there.

3685. Do you, sir, consider that the Washington State refineries are captive to the Trans Mountain pipeline system?

3686. **MR. GRAY:** I guess I would let Mr. Gaske speak to whether or not they’re captive by his definition. But as I state in my evidence, my understanding is they can receive their crude either from the Trans Mountain system or from the water-borne crude.

3687. **MR. DAVIES:** How would you define “captive”, Mr. Gray?

3688. **DR. GASKE:** Well, if I could answer that ---

3689. **MR. DAVIES:** With respect, Dr. Gaske, I’m asking now for Chevron’s view.

3690. **DR. GASKE:** Well, I think he actually referred the question back to me as far as the definition of captive and he’s relying on me for that definition.

3691. And the definition of captive is someone who is reluctant to switch suppliers because there are economic barriers to doing so. It doesn’t necessarily mean that they absolutely cannot but that there are some fairly significant economic barriers to switching.

3692. **MR. DAVIES:** So with that definition, Mr. Gray, do you believe that the four Washington State refiners are captive to the Trans Mountain system?

3693. **MR. GRAY:** As I stated in my evidence, my understanding is that it is -- the Trans Mountain system is the only manner in which the Washington State refineries can receive Canadian crude so that would make them captive to the Canadian crude.

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3694. **MR. DAVIES:** What is the total capacity of the four Washington State refineries, Dr. Gaske, do you know?
3695. **DR. GASKE:** I have a general idea but I think I better defer that to one of my fellow panel members.
3696. **MR. DAVIES:** Well what's your general idea?
3697. **DR. GASKE:** I've been told it's on the order of about 600,000 barrels per day.
3698. **MR. DAVIES:** Right. And what is the capacity of the Puget Sound pipeline that transports crude from the Trans Mountain pipeline to the four Washington State refiners?
3699. **DR. GASKE:** Approximately 180,000 barrels per day.
3700. **MR. DAVIES:** Thank you.
3701. Now, if we could turn up, please, Exhibit C5-6h, at Adobe page 9, and this is Information Request Number 7 from the firm service shippers.
3702. And just before I get to this response, Mr. Bergner made the point in his questioning that Chevron doesn't like to be referred to as an uncommitted shipper because it has for many years been committed to the Trans Mountain system.
3703. And on that basis, Mr. McCutcheon or Mr. Gray, in Chevron's view what does that past commitment entitle Chevron to on a go-forward basis, if anything?
3704. Well, Dr. Gaske needs to tell you Chevron's view? I guess so.
3705. **MR. GRAY:** Sorry, could you repeat the question, please?
3706. **MR. DAVIES:** Sure. My question was what in Chevron's view does the past commitment that it has made to the Trans Mountain system entitle it to on a go-forward basis, if anything?
3707. **MR. GRAY:** At this point we're not making any claim of past commitment meeting any future obligation.

3708. **MR. DAVIES:** Thank you.

3709. So if we turn up then this response to Information Request 7, and Dr. Gaske, the questions here relate to statements in your evidence suggesting that it is common for regulators to set aside capacity for existing shippers when new shippers enter the market.

3710. And in “A” you were asked to identify all statements in decisions of the National Energy Board that describe the inherent obligation to existing customers on a pipeline, to use your words, and you refer us to the response to NEB Information Request 1.7a and b, right?

3711. **DR. GASKE:** Yes.

3712. **MR. DAVIES:** And we’re going to turn to that response in a minute, but before we do, let me ask you, did you search decisions of the National Energy Board for statements that describe the inherent obligation to existing customers on a pipeline?

3713. **DR. GASKE:** I’ve seen discussions of it in a number of decisions, yes, and in tariffs.

3714. **MR. DAVIES:** So you did find such statements in decisions made by the National Energy Board?

3715. **DR. GASKE:** I have seen instances where the National Energy Board has essentially allowed, in the past, the historical use as a method of apportionment. I’ve seen instances where the National Energy Board has required companies to essentially put in their tariff an opportunity for a priority designation based on the reliance of some existing shipper on the system and so I have seen that.

3716. **MR. DAVIES:** So you have seen statements in National Energy Board decisions that describe what you refer to as the inherent obligation to existing customers on a pipeline, yes?

3717. **DR. GASKE:** Let me be very, very clear. I am not proposing in this proceeding, nor is Chevron proposing in this proceeding that the Board should use that as criterion.

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3718. **MR. DAVIES:** Okay. So what's the answer to the question?
3719. **DR. GASKE:** I have seen language that suggests that in the past there have been occasions when the Board has approved it.
3720. **MR. DAVIES:** Well, there have been occasions where the Board has in past decisions addressed this issue of the inherent obligation of a pipeline to existing customers; right?
3721. **DR. GASKE:** Yes.
3722. **MR. DAVIES:** And we asked you in 1.7a to address us to those statements; right?
3723. **DR. GASKE:** Yes.
3724. **MR. DAVIES:** And you're telling us that when we flip to 1.7a and b from the National Energy Board we're going to see those statements?
3725. **DR. GASKE:** You'll see a discussion of the instances that I'm aware of, yes.
3726. **MR. DAVIES:** Are those the only instances that you became aware of as the result of your research?
3727. **DR. GASKE:** At the time of this response, yes.
3728. **MR. DAVIES:** You've since been educated?
3729. **DR. GASKE:** Yes.
3730. **MR. DAVIES:** Okay. Did you come across, in researching Board's decisions, the decision in MH-1-2006 which relates to an application by TransCanada PipeLines to transfer certain pipeline assets to TransCanada Keystone?
3731. **DR. GASKE:** No.
3732. **MR. DAVIES:** Pardon me?
3733. **DR. GASKE:** No.

3734. **MR. DAVIES:** Okay. Now, when you told me that you'd become educated, Dr. Gaske, what do you mean by that?
3735. **DR. GASKE:** Well, I read a number of Board decisions through the years that very often the language is fairly similar among them, it discusses the Board's latitude to look at these issues on a case-by-case basis.
3736. **MR. DAVIES:** In your response to the firm service shippers' request 1.7b, you were asked to identify all decisions of the National Energy Board in which priority status has been provided to existing shippers when new markets emerge or new customers seek service on a pipeline, which again are words that appear in your evidence.
3737. And in your response, Dr. Gaske, you refer to priority destination status; right?
3738. **DR. GASKE:** Yes.
3739. **MR. DAVIES:** And when you made the statements in your evidence that are quoted in the preamble where you suggest that it is common to set aside capacity for existing shippers when new shippers enter into the market, were you referring specifically to orders granting priority destination status?
3740. **DR. GASKE:** No, sir. I was referring to a general regulatory concept that's often applied across regulatory jurisdictions in a variety of different instances.
3741. The reason for that in fact is that I wanted to contrast that concept with the concept that's being proposed in this firm service application. I am not proposing that the Board adopt historical use. I'm actually proposing that they continue with what they're currently doing.
3742. However, I do have a discussion of this regulatory principle and concept that other Boards have adopted, so that I can contrast it with what's being proposed here; that while some Boards have approved the concept that you would protect existing shippers, I've never seen a Board say that we should develop new products, new services so that we can develop new markets that don't exist already, at the expense of current shippers, that we should abandon service to current shippers.
3743. So I have been trying to make a contrast between one regulatory principle

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that's fairly common. This Board can accept that principle or not accept that principle, but the real contrast is with this idea that you develop new markets at the expense of existing shippers, which is exactly the opposite concept and that's what's being proposed here.

3744. **MR. DAVIES:** Based on the decisions that you've reviewed, Dr. Gaske, has this Board, in past decisions, endorsed the regulatory principle or concept that it is appropriate to set aside capacity for existing shippers when new shippers enter the market?

3745. **DR. GASKE:** I believe the priority destination status can be interpreted that way, yes.

3746. **MR. DAVIES:** And that's why I asked you the question whether, in making these comments in your evidence, you had in mind priority destination status. And you told me no, you didn't have that in mind; you had general concepts in mind.

3747. And so I'm asking you now, are you aware of any Board decision, this Board's decision that have endorsed that general concept?

3748. **DR. GASKE:** I know that that concept has been incorporated into the tariffs of regulated companies in the past, regulated oil pipelines in the past, yes.

3749. **MR. DAVIES:** So the answer is no, you're not aware of any specific Board decisions that have endorsed that concept?

3750. **DR. GASKE:** No.

3751. **MR. DAVIES:** The answer to my question is ---

3752. **DR. GASKE:** Yes, the answer is yes, with regard to oil pipelines.

3753. **MR. DAVIES:** Now if we could then go to your response to National Energy Board Information Request 1.7, and that's Exhibit C5-6b, at Adobe page 9.

3754. And over on Adobe page 10, Dr. Gaske, what you tell us is that in the United States, *"It is common practice for oil pipelines to designate shippers as "Existing" or "New"..."* and to allocate the majority of available capacity to existing shippers; right?

3755. **DR. GASKE:** Yes.

3756. **MR. DAVIES:** When you prepared your evidence, sir, did you think that this was also a common practice among Canadian oil pipelines?

3757. **DR. GASKE:** No, I did not.

3758. **MR. DAVIES:** We can agree, can we, that Canadian oil pipelines do not set aside a discrete proportion of capacity for new and existing shippers?

3759. **DR. GASKE:** Yes, that's one reason why I'm not recommending that the Board do so.

3760. **MR. DAVIES:** Mr. Gray, in your evidence, and we probably don't need to turn it up, but you mentioned that Canadian crude is discounted as against other available crudes?

3761. **MR. GRAY:** Yes.

3762. **MR. DAVIES:** And if we could turn up, please, Exhibit C5-6h, at Adobe page 3, and that is your response to Information Request 1.2 from the firm service shippers.

3763. Do you have that, sir?

3764. **MR. GRAY:** I do.

3765. **MR. DAVIES:** Thank you.

3766. And in (a) we asked you why "*Canadian crude is discounted as against other available crudes.*"

3767. And you replied that,

"The reasons for the structural discounts are outside the scope of the evidence."

3768. Right?

3769. **MR. GRAY:** Correct.

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3770. **MR. DAVIES:** And does that mean, sir, that you don't know the reasons or that you know them but you'd prefer not to say?

3771. **MR. GRAY:** I think we've heard lots of evidence over the last two days as to the various reasoning behind -- and beliefs behind why we're seeing discounted Canadian crude and I don't particularly disagree with any of them.

3772. **MR. DAVIES:** Okay. And in 1.2b, Mr. Gray, you were asked whether the discounting of Canadian crude was in the Canadian public interest and you responded by saying:

“Chevron has not formulated a view as to whether the Canadian public interest is best served by relatively high or relatively low Canadian crude oil prices.”

3773. And that's the end of the response.

3774. Now, sir, with respect, the question didn't ask whether high or low Canadian oil prices were in the public interest. The question asked whether the discounting of Canadian crude as against other available crudes was in the public interest.

3775. And are you saying that Chevron does not have a view as to whether it is in the Canadian public interest that Canadian crude be discounted as against other available crudes?

3776. **MR. GRAY:** That's correct.

3777. **MR. DAVIES:** Can you give me one reason why the discounting of Canadian crude, as against other available crudes might be viewed as being in the Canadian public interest?

3778. **DR. GASKE:** If I could answer that ---

3779. **MR. DAVIES:** No, I prefer you didn't, Dr. Gaske. The question wasn't addressed to you and it relates to Mr. Gray's evidence.

3780. Let Mr. Gray answer the question. When he's done, I'll let you speak.

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3781. **MR. GRAY:** In terms of Canadian public interest as not being a area that has been studied by Chevron and does -- we do not have a particular view that I can share.

3782. **MR. DAVIES:** Okay, so fair enough. So when I ask you to give me one reason, you can't give me one or you won't.

3783. **DR. GASKE:** If I could answer that.

3784. **MR. DAVIES:** Yes, Dr. Gaske, go ahead.

3785. **DR. GASKE:** The public interest is a very broad concept. You have many Canadian producers and sellers of oil and you have many Canadian consumers of oil. Low prices are in -- essentially in the public interest of consumers, possibly many of the businesses and manufacturers in Canada.

3786. So there is essentially a trade-off in the public interest as to which part of the public's interest is most important.

3787. **MR. DAVIES:** If we could turn up, please, Exhibit C5-6h at Adobe page 2, and this is Chevron's response to the firm service shippers' Information Request 1.1.

3788. Now, Chevron was asked for historic information about the nominations and deliveries to the Burnaby refinery, and it declined to provide the information because it says that information is commercially sensitive and confidential; yes?

3789. **MR. GRAY:** That's correct.

3790. **MR. DAVIES:** Can you explain to me, Mr. Gray, why this historic information is considered to be commercially sensitive and confidential? What would be the harm in disclosing it?

3791. **MR. GRAY:** History includes up until today. So we have ongoing businesses and contracts with -- that -- and there are our direct competitors sitting in the room today. And they can impact the decisions of others and our -- on ourselves and, as such, it makes them business sensitive and we consider them confidential.

3792. **MR. DAVIES:** So what you're telling me is that the historic use of the Burnaby refinery is commercially sensitive because that would somehow give a

competitive advantage to your refinery competitors?

3793. **MR. GRAY:** Has the potential to, yes.

3794. **MR. DAVIES:** And can you explain to me how?

3795. **MR. GRAY:** When you reveal deliveries, volumes, there can be much information that can be read into those -- that information and it would reveal strategies and -- of our particular operation that we would rather not make public.

3796. **MR. DAVIES:** Over on Adobe page 4 of the same document in respect of Information Request 1.3, you were asked to provide historic information about bids and deliveries off the dock, and you declined to provide the historic information on a monthly basis but had no difficulty providing the information on an annual basis; right?

3797. **MR. McCUTCHEON:** I provided that information and we submitted that information. While we do generally consider that commercially sensitive, we had made certain statements regarding market development and our activities over the dock and felt that providing at least some information was necessary.

3798. **MR. DAVIES:** In 1.3b, you were asked whether Chevron submitted a bid to Trans Mountain for firm service to the Westridge dock, and you refused to answer on the basis of confidentiality; right?

3799. **MR. GRAY:** That's correct.

3800. **MR. DAVIES:** Let's assume that Chevron did not submit a bid for firm service. The harm to Chevron in disclosing that information would be what?

3801. **MR. BERGNER:** I'm sorry; there's a premise in this question that hasn't been established.

3802. **MR. DAVIES:** That's why I asked to make the assumption that Chevron did not submit a bid for firm service.

3803. **MR. BERGNER:** The question was asked in the IR, the IR was answered. There's been no objection to the IR response taken.

3804. **MR. DAVIES:** And I haven't objected to it. I'm just asking the question.

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If you assumed that Chevron did not submit a bid for firm service, if we all made that assumption, the harm to Chevron in disclosing that information would be what?

3805. Mr. McCutcheon?

3806. **MR. McCUTCHEON:** We have submitted, at the end of the day, whether we did or not bid or sign a confidentiality agreement is confidential and we're not going to, I think, respond any further to that.

3807. **MR. DAVIES:** Okay. The evidence of Trans Mountain is that seven parties submitted TSAs for firm service. You're aware of that?

3808. **MR. McCUTCHEON:** To be honest, I didn't pay attention to that, no.

3809. **MR. DAVIES:** I'm sorry?

3810. **MR. McCUTCHEON:** I was not aware of that.

3811. **MR. DAVIES:** Well, take it from me that the evidence is that seven parties submitted TSAs. We know that five parties were successful bidders, meaning that there were two parties that were unsuccessful bidders, by my math.

3812. Does Chevron know the identity of either of the two unsuccessful bidders?

3813. **MR. McCUTCHEON:** Sounds like a bit of a leading question.

3814. At the end of the day, our response stands. We -- whether we submitted a bid or not is confidential.

3815. **MR. DAVIES:** I didn't ask whether you submitted a bid. I asked whether you're aware of the identity of either of the two unsuccessful bidders.

3816. **MR. McCUTCHEON:** Well, obviously, by answering your question it would reveal whether or not Chevron did, in fact, bid or not. And that defeats the purpose of saying it's confidential, so we're not going to answer that question.

3817. **MR. DAVIES:** Okay. Thank you very much, Madam Chair; thank you, panel.

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3818. **THE CHAIRPERSON:** Thank you, Mr. Davies.
3819. According to the sheet I have, there's no other party other than the Applicant who has questions for this panel. Is this confirmed?
3820. Mr. King, you have nothing for this panel?
3821. **MR. KING:** No.
3822. **THE CHAIRPERSON:** I just wanted to make sure I don't miss you.
3823. So Trans Mountain.
- EXAMINATION BY/INTERROGATOIRE PAR MR. KEOUGH:**
3824. **MR. KEOUGH:** Thank you, Madam Chair. Good afternoon, Board Members.
3825. Dr. Gaske, I just have a couple of preliminary questions for you while I'm setting up here.
3826. Did you assist Mr. Gray or jointly prepare his testimony?
3827. **DR. GASKE:** No, I did not.
3828. **MR. KEOUGH:** Did you assist Mr. McCutcheon or jointly prepare his testimony?
3829. **DR. GASKE:** No, I did not.
3830. **MR. KEOUGH:** And the reason I ask that is that I'm generally a nice guy, you can take that from me, but -- don't ask anyone else. But I'm not going to be as nice today as Mr. Davies was. And by that, I mean if I pose a question to Mr. Gray on Mr. Gray's evidence, I'm going to expect Mr. Gray without your assistance. We got the rules clear?
3831. **DR. GASKE:** I understand, and unless it's something that's in my bailiwick.
3832. **MR. KEOUGH:** Well, if you didn't write his evidence, I would be

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suggesting to you it is not in your bailiwick.

3833. Mr. Gray, could we turn to your testimony, please, and I'm specifically looking at Exhibit C5-5b; I think I've got that much right. And I'm looking at page 1.

3834. Now, I see from your response to Question A2 that it is your responsibility to ensure that Chevron's Burnaby refinery receives adequate crude supplies of various types and quantities required at the best price; correct?

3835. **MR. GRAY:** Correct.

3836. **MR. KEOUGH:** Now, given your stated -- or when I say "your" -- Chevron's stated dependence on supply from Trans Mountain, can I confirm that Chevron has been able to obtain its required crude supplies at the best price without ever obtaining a priority access designation?

3837. **MR. GRAY:** Burnaby has never received priority access designation.

3838. **MR. KEOUGH:** So the ---

3839. **MR. GRAY:** It received 100 percent of its crude over the Trans Mountain system or nearly 100 percent of its crude over the Trans Mountain system.

3840. **MR. KEOUGH:** So you've been able to fulfil your responsibilities without getting a priority access designation; correct?

3841. **MR. GRAY:** If the question is am I receiving the crude that I would like to receive, that's no.

3842. **MR. KEOUGH:** Well, the question was the question.

3843. **MR. GRAY:** Can you restate the question, please?

3844. **MR. KEOUGH:** You have been able to fulfil your responsibilities without ever getting a priority access designation; correct?

3845. **MR. GRAY:** No.

3846. **MR. KEOUGH:** I hope your bosses don't hear that.

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3847. Could I get you to look to page 2 of your evidence, specifically Answer Number 6? And on line 17, there's a sentence that says "*This experience demonstrated why the limited data...*"
3848. Do you see the words, "*limited data*"?
3849. **MR. GRAY:** Yes.
3850. **MR. KEOUGH:** And are you there referring to the data for a period of some 26 months running from the time of Trans Mountain's most recent expansion in 2008 to the timing of filing this application? Is that the period of limited data you are referring to?
3851. **MR. GRAY:** The 26 months that Trans Mountain used to assess whether there was additional or extra land capacity that could be reallocated to the dock, yes, that is the period of time.
3852. **MR. KEOUGH:** And you understand Trans Mountain subsequently updated the data to the current period for the hearing?
3853. **MR. GRAY:** Yes, I understand that.
3854. **MR. KEOUGH:** Now, could I get you to continue on to page 3 and specifically lines 13 to 21 on that page?
3855. And just a small question for you on this whole trans mix issue. Is Chevron the only party capable of providing this service or could other entities perform this function?
3856. **MR. GRAY:** The Burnaby refinery is currently the only one that's providing that service, to my knowledge.
3857. **MR. KEOUGH:** That wasn't quite my question.
3858. You may be the only one performing it currently, but my question was are you the only ones capable of performing it or could some other party or entity perform the function?
3859. **MR. GRAY:** If somebody else was to provide that service, my belief is they would have to invest capital and build the infrastructure necessary to process the

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trans mix or find some other processor to handle it, but anything is possible with money.

3860. **MR. KEOUGH:** All right.

3861. **THE CHAIRPERSON:** Pardon me, Mr. Gray. May I ask you to speak louder and into the mic?

3862. **MR. GRAY:** Sorry.

3863. **THE CHAIRPERSON:** Thank you.

3864. **MR. KEOUGH:** Thank you, Madam Chair.

3865. Could I get you, Mr. Gray, to flip on to the page 4, and I'm looking at lines essentially 8 through 20 on that page. And there, you list the parties who receive crude via land destinations; correct?

3866. **MR. GRAY:** That's correct.

3867. **MR. KEOUGH:** Now, am I correct in my understanding that in aggregate, these parties get first dibs on the allocated land capacity in priority to dock shippers?

3868. **MR. GRAY:** So if I restate that question, you're asking whether the land gets priority destination over the dock?

3869. **MR. KEOUGH:** Maybe we'll go with my question. I'm not sure if you put a nuance in there that I think captures what I said.

3870. I am trying to understand whether you would agree that in aggregate, the parties you've listed here get first dibs on the allocated land capacity in priority to any dock shippers?

3871. **MR. GRAY:** By being a land destination and the current way the tariff is written, the normal 250,000 barrels that's available is open to all the land destinations for nomination.

3872. **MR. KEOUGH:** And they would get that before it went to the dock?

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3873. **MR. GRAY:** The current tariff is written that way, yes.
3874. **MR. KEOUGH:** Okay. And as you've just noted, the process for acquiring land capacity is via nominations; correct?
3875. **MR. GRAY:** That's correct.
3876. **MR. KEOUGH:** And there's no big premium paid for being involved in that process?
3877. **MR. GRAY:** To my knowledge, firm service has never been offered to any land shipper and it's a common carriage line run under the current tariff and so, no, there's no premium.
3878. **MR. KEOUGH:** So the land shippers just pay the straight applicable toll approved by this Board?
3879. **MR. GRAY:** Yes, they do.
3880. **MR. KEOUGH:** Okay. Could I get you to turn now to page 5 of your evidence and Answer Number 12?
3881. And in that response, you've got some data for a nine-month period, correct; on lines 11 to 19?
3882. **MR. GRAY:** Yes, this would be the period after the application.
3883. **MR. KEOUGH:** Right. Now, we had a discussion a few moments ago about Trans Mountain's 26-month data set which you call limited. And again if you go down to Answer 13, line 30, you talk about it being "a very narrow period". Do you see that?
3884. **MR. GRAY:** Yes.
3885. **MR. KEOUGH:** And, just curious. If a 26-month period is limited or narrow, would that make a 9-month period even more limited and more narrow?
3886. **MR. GRAY:** The data that was included in Answer 12 expanded the period that -- the 26 months and effectively made it a larger window and set of data.

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3887. **MR. KEOUGH:** Okay. So you are saying we should focus on the full period of the 35 months and not just the 9 months. Is that what you're telling me?
3888. **MR. GRAY:** I believe the point of my evidence was if you just looked at the narrow 26 months, you may draw the wrong conclusions in a very dynamic world where demands on the pipeline can go up and can go down, and making a decision or even a recommendation of a tariff and reallocating space based on a very narrow -- what I consider a narrow window that did not fully appreciate the dynamics, you can end up making a poor conclusion.
3889. **MR. KEOUGH:** So are you suggesting that we should look at the 35-month period?
3890. **MR. GRAY:** I suggest we actually go back to refer to my evidence on page 6 that actually includes the period back to 2004.
3891. **MR. KEOUGH:** I appreciate that, and I did have a question for you because I was sort of sequentially going through this, but I did notice your transcript correction of your evidence where you deleted the last part of lines 1 and 2; correct?
3892. And would that be in recognition of the fact that your statement that the TMX-1 expansion went into service in March 2004 and do you now understand it went in service in November 2008?
3893. **MR. GRAY:** Yes, I was -- my understanding is that there was a number of phases to TMX-1, and in 2004 kind of the first phase of that overall expansion program was completed, so to make the statement accurate you needed to remove the reference to TMX-1.
3894. **MR. KEOUGH:** Right. So effective November 2008, the pipeline was brought up to its current capacity?
3895. **MR. GRAY:** Yes.
3896. **MR. KEOUGH:** Would you agree with me that comparing systems with different capacity numbers would be comparing apples and oranges?
3897. **MR. GRAY:** No. Because what I was trying to demonstrate, irrespective of what the capacity was or the changes in the tariff, was that the system is dynamic, and there are factors that affect the demand on the system, whatever its capacity is,

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and those changes can lead to levels of apportionment and/or underutilization. And the period of 26 months that Trans Mountain used to make their assessment was a period of underutilization of the line on the land side.

3898. **MR. KEOUGH:** Sir, do you understand that ---

3899. **MR. GRAY:** This included both the Tesoro fire and when we had several years, both 2008 and 2010, when we had significant operational issues so in my estimation, use of that 26-month period under-stated the actual need and demand on the pipeline during that period of time.

3900. **MR. KEOUGH:** Well, we'll talk a little bit about that. But do you understand that at the same time the system was expanded, the apportionment methodology changed a bit?

3901. **MR. GRAY:** Yes.

3902. **MR. KEOUGH:** All right. Now, could I get you to look down the page to Answer 13, and specifically lines 34 through 36? And there you point to the recent history of apportionment and you state that:

"...the current demand for land capacity greatly outstrips the allocated land capacity."

3903. Do you see that comment?

3904. **MR. GRAY:** Sorry, bouncing back and forth here. You're back on page 5?

3905. **MR. KEOUGH:** Yes. You forced me to go ahead to page 6. I'm not taking any responsibility for it.

3906. **MR. GRAY:** Sorry to jump ahead and throw you off.

3907. **MR. KEOUGH:** No, no. I'm on track.

3908. **MR. GRAY:** That's good.

3909. **MR. KEOUGH:** Lines 34, 36, specifically lines 35 and 36, I was looking at the comment after the comma where you say:

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*"...the current demand for land capacity greatly outstrips the
allocated land capacity."*

3910. Do you see that?
3911. **MR. GRAY:** I do.
3912. **MR. KEOUGH:** And sir, making that statement, are you equating demand with the aggregate land nominations?
3913. **MR. GRAY:** Yes.
3914. **MR. KEOUGH:** Is it Chevron's position that the recent level of aggregate land nominations are an accurate reflection of aggregate land demand?
3915. **MR. GRAY:** I really -- if I heard you correctly, you used the word "nomination".
3916. **MR. KEOUGH:** I used the word "nomination" in one part of my sentence. I can repeat it, if you like.
3917. **MR. GRAY:** Please. Thank you.
3918. **MR. KEOUGH:** Is it Chevron's position that the recent level of aggregate nominations are an accurate reflection of aggregate demand? True demand. Let's call it true demand.
3919. **MR. GRAY:** I guess the only ones I can comment on are the Chevron nominations and Chevron demand, and I can confirm that our nominations reflect our demand on the system and that if I had the opportunity, I would take every barrel that I nominated.
3920. **MR. KEOUGH:** So you have no view of the aggregate nominations and whether those reflect aggregate true demand. Got no view of that?
3921. **MR. GRAY:** Yeah. There -- I believe the nominations are a reflection, to some degree. We heard yesterday about the challenges on verification, et cetera. If I look at the Chevron window that I have the detailed information around, our nomination reflects our demand on the system.

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3922. And if I look at the aggregate demand of the Washington State refineries, they're nominating almost 400,000 now. They have a distillation capacity of close to 600,000. With the price discounts, you certainly expect they'd be wanting to take as much as they could possibly get their hands on.
3923. **MR. KEOUGH:** And you don't think the people would temper their true demand with something like the adequacy of the pipeline capacity to actually get that crude oil to their refineries?
3924. **MR. GRAY:** I can't speak for the others. I can only speak for myself.
3925. **MR. KEOUGH:** I just thought you did, but okay.
3926. Now, if I take you to page 6 -- see, we are going sequentially except when I'm interrupted. I wanted to take you to lines 12 to 14 on the bottom of that page. And would you agree with me that lines 12 and 13 confirm that essentially for the full period from the time of the November 2008 expansion to October 2010 the land was not fully using the capacity to which they were entitled?
3927. **MR. GRAY:** That's correct, and that surplus capacity then flowed to the dock and was able to be taken advantage of from offshore and be shipped out as dock nominations.
3928. **MR. KEOUGH:** All right. Now, I want to take you to page 7, and specifically your answer to Question 15. And I just want to understand what you're saying there.
3929. You're telling us that Chevron encountered certain problems that resulted in lower than normal plant operations in 2008 and 2010, but now you expect to return to more normal levels going forward? Is that right?
3930. **MR. GRAY:** That's correct.
3931. **MR. KEOUGH:** And the base throughput would be closer to the name plate capacity of your refinery of some 57,000 barrels a day. Have I got that right?
3932. **MR. GRAY:** That's correct.
3933. **MR. KEOUGH:** Do you have a copy of Trans Mountain's application

available to you?

3934. **MR. GRAY:** Yes.

3935. **MR. KEOUGH:** And I'm specifically -- that's -- I don't know what exhibit that is. But I'm specifically looking at the Purvin & Gertz report, which is at Tab 5. And I think that's Exhibit B1-9.

3936. **MR. GRAY:** I have it.

3937. **MR. KEOUGH:** And I just wanted to take you to page 3 of that report where there's a table. And that may be Adobe page 5 or 6. Who knows? You got it up there.

3938. **MR. GRAY:** Page 3, yeah.

3939. **MR. KEOUGH:** So could you take a look at that table for me, please, and it says, "*Trans Mountain historical deliveries*".

3940. **MR. GRAY:** I see that.

3941. **MR. KEOUGH:** And do you see there's a footnote there where -- after that title which is the source of the numbers?

3942. **MR. GRAY:** Yes.

3943. **MR. KEOUGH:** And I haven't seen any indication that Chevron takes issue with this data or you haven't put anything on the record indicating that it's incorrect. Is that right?

3944. **MR. GRAY:** I haven't checked it to the nearest, you know, it generally shows the correct trend. I don't know if I ran it against our accounting records they would be exactly the same or not.

3945. **MR. KEOUGH:** Okay, and that's fine.

3946. Now, can I get you to look at the first line under "Thousand barrels per day"; it reads "Burnaby crude". Do you see that?

3947. **MR. GRAY:** I do.

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3948. **MR. KEOUGH:** And am I correct that that would be Chevron's volumes of crude?
3949. **MR. GRAY:** That would be Chevron's volumes of crude, yes.
3950. **MR. KEOUGH:** Now, if I look across ---
3951. **MR. GRAY:** Burnaby's crude not Chevron's crude.
3952. **MR. KEOUGH:** How many refiners are there in Burnaby? Let me guess. You don't have to answer that.
3953. Now, if I look across the full period covered by the table, would you agree that Burnaby crude we'll call it, to protect the identity of the innocent, has never come close to the throughput capacity of the Chevron refinery being a nameplate capacity of 57,000 barrels per day?
3954. **MR. GRAY:** That's correct.
3955. **MR. KEOUGH:** In fact, if we accept -- even if we take out the anomalies for 2008 and 2010 -- which you had previously indicated when your refinery had some issues -- would you be able to agree with me that the average over this full period is still only around the 46,000 or 47,000 barrels per day?
3956. **MR. GRAY:** Now -- help you out here. The 57,000 barrels a day is what's considered a nameplate capacity. At any given day with things running the way they should, they would take 57,000 barrels a day.
3957. A refinery, when it operates, has to take into account maintenance, shut-downs, economics and may or may not run the full nameplate capacity ---
3958. **MR. KEOUGH:** Well ---
3959. **MR. GRAY:** --- 365 days of the year. And these numbers are the averages for those years and include utilization and any turndown associated -- or shutdowns during that period of time.
3960. **MR. KEOUGH:** Right, but when you said in your evidence,

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“Going forward, CCL expects to achieve throughput closer to the nameplate capacity of 57,000 barrels per day.”

3961. Were you intending to convey to us that your expectation is, going forward, this number would go to 57 not be 46 or a 47?
3962. **MR. GRAY:** Well, a couple of factors that would go into consideration of the 57 that there -- over the last couple of years, there has been some investments in our units that has expanded the capacity, and if I go forward and look at our expected utilization, we will be in excess of the numbers that we have shown historically.
3963. And in terms of sharing our forecast, that's as far as I'm willing to go.
3964. **MR. KEOUGH:** Well, let's just test that a little bit.
3965. In your evidence you indicate that you've addressed the problems that resulted in lower than normal plant operations, and you agreed with me that your expectations going forward would be that you would be more typical of normal operations, and -- so can we agree that normal operations for Chevron would put you somewhere in the range of 46 to 47,000 barrels per day?
3966. **MR. GRAY:** Sorry, was there a question?
3967. **MR. KEOUGH:** I was asking you if you will agree with that; that normal operations would put you in the range of 46 to 47,000 barrels per day?
3968. **MR. GRAY:** I think my previous answer where I said that we had made some improvements, and not only in the ability for us to take additional crude and in reliability improvements, and those two combinations will result in the numbers being higher than what we have shown historically.
3969. And on any given day, we have the capability of taking up to 57,000 barrels a day. And ---
3970. **MR. KEOUGH:** And I did hear that answer.
3971. But would you agree with me, sir, again, that your normal operations, the history of your normal operations for the full period of the table, would indicate that those normal operations -- even if I take out the couple of years when you had upsets

-- would average 46 to 47,000 barrels per day?

3972. **MR. GRAY:** I would agree with that.

3973. **MR. KEOUGH:** I'll get you to look at pages 8 and 9 just briefly where you talk about Alaska North Slope production, and I just wanted to get your views on one aspect of that, and I think that the graph -- or the chart I suppose you call it -- shows it best.

3974. Now, declines in Alaska North Slope production are nothing new; I take it?

3975. **MR. GRAY:** That's what the chart would show, yes.

3976. **MR. KEOUGH:** And would you be able to agree with me that the rate of decline has reduced over the more recent period, say, from 2007 to today?

3977. **MR. GRAY:** The slope of the line has declined, yes.

3978. **MR. KEOUGH:** Could I get you to flip to page 11 under "Mitigation Opportunities".

3979. Well, I don't want to go through this in detail so I've got a general question for you to see if I can get you to agree.

3980. Am I correct that Chevron is not saying that it could not get capacity via these mitigation mechanisms; you're saying that you would have to pay a market price to get it?

3981. **MR. GRAY:** No, I'm not saying that.

3982. **MR. KEOUGH:** Are you saying you could not get the capacity?

3983. **MR. GRAY:** I think it comes back down to security of supply and reliability and to general access. It may or may not be available to me.

3984. **MR. McCUTCHEON:** If I may, I may add to that. I think our answer was, you know, fairly ---

3985. **MR. KEOUGH:** You mean Mr. Gray's answer? Okay.

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3986. **MR. McCUTCHEON:** Mr. Gray's, but I'm familiar with the subject.
3987. At the end of the day, our presumption -- Chevron's presumption -- is that Trans Mountain in general going forward is going to be full. So, therefore, the strategies or the options that Kinder Morgan has presented to us, we don't think are going to be there on a regular basis; certainly can't count on them from a business planning perspective.
3988. If you're referring to the option for the firm shippers to acquire that space -- do you want to have a discussion on that?
3989. **MR. KEOUGH:** Though I was asking Mr. Gray but welcome to the fray, you'll get there soon -- but I was asking Mr. Gray whether or not the reason that you didn't think these mitigative measures would be of little assistance to Chevron in your day of need, was because you couldn't avail yourself of them or that you would have to pay to avail yourself of them?
3990. **MR. GRAY:** The tariff allows us to -- as the new tariff as is proposed under Firm 50 -- does allow us access to these mitigation mechanisms. How successful we are at utilizing them I believe is the question at hand, and that's probably where we differ.
3991. **MR. KEOUGH:** Okay. No, that's all I was looking for.
3992. Now, I was looking at your answer 25 and there you provide certain of your views on priority destination.
3993. Would I be correct that if a party receives such priority destination -- or designation I suppose -- and if that were ever to be granted by this Board, it would amount to the recipient getting firm capacity without paying any additional fee or premium?
3994. **MR. GRAY:** That would be my understanding, yes.
3995. **MR. KEOUGH:** Okay, thank you.
3996. Mr. McCutcheon, I'm going to have a chat with you for a couple of moments, if I might. Now, can I talk to you first about -- on page 2, answer number six, and this came up again on page 5, answer 12; but let's deal with the first one.

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3997. Now, in these responses Chevron expresses the view that market development for Canadian crudes can be accomplished under the existing procedures; correct?

3998. **MR. McCUTCHEON:** Yes.

3999. **MR. KEOUGH:** And you go on to say that Chevron itself has engaged in off -- overseas market development activities; correct?

4000. **MR. McCUTCHEON:** Chevron and many others, yes.

4001. **MR. KEOUGH:** Now, could I get you to flip to Chevron's response to the firm shippers' question 1.3, and I'll have an exhibit number for you in a second, Exhibit C-5-6h, and I'm going to go out on a limb and say that that's Adobe page 4. If we all master the system of identifying documents we could call it a day but I'm not going to suggest I'm there yet.

4002. Do you see that, sir, 1.3?

4003. **MR. McCUTCHEON:** Yes.

4004. **MR. KEOUGH:** And I'm looking at the table on the next page, if I might take you to that and I think this might have been up earlier actually when Mr. Davies was questioning.

4005. And I'm not going to profess to have grasped everything that's shown in this table, but if I go to the third last column that's titled "Percent of cargos to non-U.S. refineries".

4006. Do you see that, sir?

4007. **MR. McCUTCHEON:** Yes, I do.

4008. **MR. KEOUGH:** Would that show me that in four of the five years on the table that -- actually there's nothing in there for the 2011, I gather; but would that tell me that Chevron shipped no or very little crude off the Westridge dock to non-U.S. markets in four of those five years?

4009. **MR. McCUTCHEON:** These reflect the actual cargos done by Chevron

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in that time period, yes.

4010. **MR. KEOUGH:** So -- but am I reading it right? That in four of the five years you shipped little or no cargos to non-U.S. refineries?

4011. **MR. McCUTCHEON:** Well as a percentage basis? What's your standard, I guess, at the end of the day? I think we provided the quantity ---

4012. **MR. KEOUGH:** You put the percent in there.

4013. **MR. McCUTCHEON:** Yeah.

4014. **MR. KEOUGH:** So I'm saying, zero means zero.

4015. **MR. McCUTCHEON:** Zero means zero.

4016. **MR. KEOUGH:** Right. So again, back to my question, can we agree or conclude from this table that in four of the five years showing, not including 2011, Chevron shipped no or very little crude over the Westridge dock to non-U.S. markets?

4017. **MR. McCUTCHEON:** I think the numbers sort of speak for themselves and that's why we also added a little note there explaining that we had done cargos prior to this time period to non-U.S. refineries as well.

4018. **MR. KEOUGH:** And, sir, I'm actually not prepared to rely on the numbers speaking for themselves when I have you here and the horse's mouth.

4019. **MR. McCUTCHEON:** Okay.

4020. **MR. KEOUGH:** So, for the third time, could we conclude that in four of the five years shown Chevron shipped no or very little crude over the Westridge dock to non-U.S. markets?

4021. **MR. McCUTCHEON:** I'll be more explicit then. Three of the years out of the five in the table we did not ship any cargos to non-U.S. refineries. One of them we shipped 25 percent and the other we shipped 75 percent.

4022. **MR. KEOUGH:** Okay. Can we agree that Chevron's marketing efforts for crude over the Westridge dock that were directed towards the Asian market

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ranged from non-existent to sporadic over this period?

4023. **MR. McCUTCHEON:** No, every month when we bid for cargos or look at markets, the markets change. The arbitrage to Asia is not there every day. At the end of the day, it is the most distant market for Canadian crude. And Chevron takes a worldwide perspective, we evaluate which markets will yield the best netbacks and we direct our cargos in that fashion.

4024. The market development efforts are not necessarily reflected in the actual cargos that ship. They're market development -- there's a lot of work that goes into it prior to ever actually shipping a cargo. It involves sending SAs, providing samples, providing technical information and hopefully at the end of the day, followed by a cargo.

4025. But even in those circumstances, it may not have been Chevron that actually even benefited. It may have been another shipper who actually shipped to those markets as well.

4026. **MR. KEOUGH:** So you're distinguishing between market development and successful market development, I guess?

4027. **MR. McCUTCHEON:** No, market development is a long process, at the end of the day, markets change. And the goal of market development is to open doors and Chevron is pretty proud of our record of doing that.

4028. We've got, you know, Canadian crude of a variety of different types approved in a large number of refineries both in the U.S. and a number in Asia. And we ideally like to hope -- we hope to continue doing that unless we're shut out of the dock by this application.

4029. **MR. KEOUGH:** I was just kidding with you.

4030. **MR. McCUTCHEON:** Hurting my feelings.

4031. **MR. KEOUGH:** Now on page 3, answer 7 of your evidence, specifically lines 13 to 15 -- sorry, I'm actually looking at lines 5 to 7 before I get there.

4032. And there you talk about being shut out of access to the dock more frequently.

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4033. **MR. McCUTCHEON:** Yes.
4034. **MR. KEOUGH:** Now, I just want to confirm that Chevron could still bid on the 25,000 barrels a day available to non-firm shippers?
4035. **MR. McCUTCHEON:** There will be one cargo left for the entire industry to fight over, sure.
4036. **MR. KEOUGH:** I'm not sure that was very responsive to my question. My question was, Chevron would still be able to bid on the 25,000 barrels per day available to non-firm shippers. Is that correct or is it incorrect?
4037. **MR. McCUTCHEON:** We believe there will be available capacity for one spot cargo, yes.
4038. **MR. KEOUGH:** So the answer to my question was yes?
4039. **MR. McCUTCHEON:** Yes.
4040. **MR. KEOUGH:** And is it open to Chevron to complete a deal with a firm shipper to get an assignment of its capacity? Is that an option that's open to you?
4041. **MR. McCUTCHEON:** It's an option under the tariff, however, my understanding in listening to the firm shippers is they have their own plans for their capacity.
4042. **MR. KEOUGH:** I'm not sure if it's my questions or what but I'm having a hard time getting an answer to my question.
4043. Is it available to Chevron to complete a deal with a firm shipper for an assignment of its capacity?
4044. **MR. McCUTCHEON:** The tariff allows for an assignment, whether it's available or not is up to the firm shippers.
4045. **MR. KEOUGH:** Is the option available to Chevron?
4046. **MR. McCUTCHEON:** I don't know, it's up to the firm shippers. They own the capacity. They are the ones who would have to provide the option.

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4047. **MR. KEOUGH:** Would Chevron have access to any unused land capacities for deliveries off the dock?
4048. **MR. McCUTCHEON:** If it exists, yes.
4049. **MR. KEOUGH:** On lines 20 to 22, still on page 3, you make reference there to an expansion, "*Future capacity in the pipeline in the event of an expansion*". Do you see that?
4050. **MR. McCUTCHEON:** Yes.
4051. **MR. KEOUGH:** Is Chevron aware of Trans Mountain ever suggesting that it will not endeavour to expand its system to meet all of its shipper demands, I guess, provided that it receives the appropriate support?
4052. **MR. McCUTCHEON:** Sorry, can you restate the question?
4053. **MR. KEOUGH:** Is Chevron aware of Trans Mountain suggesting that it will not expand its system to meet all shipper demands provided it receives appropriate support?
4054. **MR. McCUTCHEON:** Well, I think -- I can't really speak for Kinder Morgan. I don't know under what terms they would offer expansion or what their expectations are in terms of a rate of return. So I think it's more than just a matter of whether or not they receive interest and expansion.
4055. I'm not sure what you mean by support.
4056. **MR. KEOUGH:** All right. Now, on page 3, answer number 8 talks about capacity allocation on the dock. Would you agree with me that under the current bid premium allocation methodology Chevron does not know from month to month whether it will be a successful bidder for dock capacity?
4057. **MR. McCUTCHEON:** Correct.
4058. **MR. KEOUGH:** Would you agree that under the current bid premium methodology Chevron does not know from month to month how much it will have to pay to secure dock capacity if, indeed, it is a successful bidder?

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4059. **MR. McCUTCHEON:** Correct.

4060. **MR. KEOUGH:** Now, I'm looking at page 4 of your evidence, and specifically up at the top where you note:

"Currently the dock is regularly apportioned because demand for dock capacity is high."

4061. Do you agree that the demand for dock capacity has been high for some time?

4062. **MR. McCUTCHEON:** Certainly in the -- I don't know what you mean by history, but in recent history, yes.

4063. **MR. KEOUGH:** And would that hold true for the period from the November 8th expansion -- November 2008 expansion up to the time of filing, I guess to the present? I was going to say to filing the application, but that would be the case, wouldn't it?

4064. **MR. McCUTCHEON:** I don't have that data in front of me.

4065. Are you referring to a particular line in a document?

4066. **MR. KEOUGH:** No, I was asking -- I mean ---

4067. **MR. McCUTCHEON:** Off the top of my head, I can't recall that far back if you're looking at specific numbers.

4068. **MR. KEOUGH:** So you're not aware of whether, over that period of time, the dock was heavily in demand?

4069. I think you commented earlier that over the period 2008 to 2010 when land wasn't using their capacity, it was taken up by the dock. Or maybe that was Mr. Gray in his evidence.

4070. Are you aware of that?

4071. **MR. McCUTCHEON:** Yes.

4072. **MR. KEOUGH:** So you're aware that over the period when the land

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shippers were not fully utilizing their allocated capacity the dock shippers stepped up and utilized the excess capacity?

4073. **MR. McCUTCHEON:** Yes.

4074. **MR. KEOUGH:** And I take it from your comments on lines 10 to 12 of this question -- or Answer 9, I suppose, that it's your view that the dock capacity or the demand for dock capacity could increase substantially in the future?

4075. **MR. McCUTCHEON:** I don't think Chevron has a view on, you know, the exact -- well, we don't have a view on what nominations will be in the future. We do expect in general demand for Trans Mountain pipeline for both land and dock to grow over time.

4076. **MR. KEOUGH:** All right. Now, I provided your counsel -- and I'm not sure if this is for you, Mr. McCutcheon, or for Mr. Gray.

4077. But I provided your counsel with a copy of two documents, being two responses to information requests provided by Chevron in the context of National Energy Board Hearing MH-2-2005. I'm assuming that he passed those on to you.

4078. **MR. GRAY:** We do have copies.

4079. **MR. KEOUGH:** Madam Chair, maybe I can have those distributed so that the Board can have them in front of them when I'm asking these questions.

4080. **THE CHAIRPERSON:** Yes, please.

--- (A short pause/Courte pause)

4081. **MR. KEOUGH:** First, do you have Response 1.14 in front of you from that proceeding?

4082. **MR. GRAY:** Yes.

4083. **MR. KEOUGH:** And I was specifically looking at responses B and then C, I suppose, somewhat together.

4084. Am I correct in my understanding that at that point in time, anyway, Chevron confirmed that with the appropriate terms and conditions it would be

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prepared to enter into what amounted to a firm service arrangement with Trans Mountain?

4085. **MR. GRAY:** I think it's important to understand the context of this particular document as a starting point, so I'll take a second.
4086. **MR. KEOUGH:** Maybe first you can tell me whether you agree or disagree, and then I'll let you elaborate.
4087. **MR. GRAY:** I'd prefer to provide the Board with some context.
4088. **MR. KEOUGH:** I'd prefer if you answered my question and then you can elaborate if you like.
4089. **MR. GRAY:** Can you repeat the question?
4090. **MR. KEOUGH:** I can. Am I correct in my understanding that, at least at that point in time, Chevron confirmed that with appropriate terms and conditions it would be prepared to enter into what amounted to a firm service arrangement?
4091. **MR. GRAY:** In response to this IR -- the question asked whether Chevron would consider some sort of model other than priority destination, and the response was yes, we would be willing to consider other models, including a firm type service, and obviously contingent on terms and conditions.
4092. And we also noted that if it was to be offered, it would require a tariff change. And although we made this request and showed some interest in a firm service, we were -- it was never followed up and we were never offered any type of firm service.
4093. **MR. KEOUGH:** Well, this was in the context of a priority designation application brought forward by Chevron; correct?
4094. **MR. GRAY:** Oh, so now you're providing the context?
4095. **MR. KEOUGH:** I think I'm entitled to ask questions, in case you're unclear of our roles.
4096. **MR. GRAY:** This was part of one priority destination application that Chevron made as allowed under the tariff at the time.

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4097. **MR. KEOUGH:** And that application was withdrawn?
4098. **MR. GRAY:** Correct. That application was withdrawn before it went to a hearing.
4099. **MR. KEOUGH:** Now, Chevron indicated that this type of arrangement would eliminate the need for priority designation, and that's at the end of part B; correct?
4100. **MR. GRAY:** We believed it would facilitate that, yes.
4101. **MR. KEOUGH:** All right. Could you ---
4102. **MR. GRAY:** And we also noted in part C that we thought that it should be offered to all shippers that would have equal opportunity for firm service. And it wasn't just a request for special consideration for Chevron.
4103. **MR. KEOUGH:** Fair enough.
4104. Could I now get you to turn to the next document -- Madam Chair, I don't know if we want to mark these separately as exhibits or together. I'm in your hands.
4105. **THE CHAIRPERSON:** I think we can mark them together as an exhibit.
4106. **MR. KEOUGH:** Okay. Well, I'll finish my questions; then maybe we'll mark them.
4107. With regard to the response to 1.15a, am I correct that in that response Chevron acknowledges that the past consistent use of the pipeline does not vest certain rights with respect to the pipeline system?
4108. **MR. GRAY:** Before answering that question, I'd like to note the beginning of the response in 1.15:

"The responses to the questions below are not evidence, but rather, argument. These points will be developed further in final argument."

4109. **MR. KEOUGH:** Fair enough. We can all read that. Can I now get an

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answer to my question?

4110. **MR. GRAY:** And so I believe the question was should our historic use of the system vest any rights?

4111. **MR. KEOUGH:** Close enough.

4112. **MR. GRAY:** And no, as in the response here. We still believe that to be the case.

4113. **MR. KEOUGH:** Okay. Thank you.

4114. Dr. Gaske, don't worry; I'm going to get to you. I'm not going to leave you out. But before I do, I just wanted to follow up with you with a -- and I'm again not sure if it's Mr. Gray or Mr. McCutcheon -- with a couple of questions on your responses to a couple of the IRs.

4115. And first I'm going to get you to turn to the NEB series, and I think those are C-5-6b.

4116. **THE CHAIRPERSON:** Mr. Keough, are we done with examining these documents?

4117. **MR. KEOUGH:** Oh ---

4118. **THE CHAIRPERSON:** If we are, we'll just give it an exhibit number related to the two items.

4119. **MR. KEOUGH:** Yes, Madam Chair, I would like to get an exhibit number.

4120. **THE REGULATORY OFFICER:** That will be B-19.

4121. **THE CHAIRPERSON:** Thank you.

--- EXHIBIT NO./PIÈCE No. B-19:

Two responses to information requests provided by Chevron in the context of National Energy Board Hearing MH-2-2005

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4122. **MR. KEOUGH:** They're not stapled together, so we'll all have to do that.
4123. Could I get you to turn up your response to National Energy Board IR-1.2. And again, I think that's C-5-6b. And it's probably Adobe page 3. And I'm looking about seven lines from the bottom that begins with the ANS -- sorry, begins with the word "also". Can't read my own writing.
4124. The last word of the line is "also underutilization of Trans Mountain's pipeline". Okay? You see that?
4125. **MR. McCUTCHEON:** Yes.
4126. **MR. KEOUGH:** Would underutilization of the Trans Mountain pipeline system, in your view, also be linked to the availability of cheaper crude supplies from alternate sources?
4127. **MR. McCUTCHEON:** Yes.
4128. **MR. KEOUGH:** Thank you.
4129. I'm going to get you to move forward to NEB 1.5, and I'm looking at the last paragraph.
4130. Now, is the situation that you're talking about here a hypothetical one?
4131. **MR. McCUTCHEON:** We were explaining our concerns of what could happen, yes.
4132. **MR. KEOUGH:** And the reason I ask is because when we were talking about your direct evidence, Mr. McCutcheon, and at page 5 of that evidence, lines 12 to 15, there you thought that the likelihood of getting an assignment of capacity from the firm shippers is low, and it seemed to be, to me, anyway, that you were adopting two contradictory positions on this point.
4133. **MR. McCUTCHEON:** What I was referring to in this point is the ability of the firm shippers to assign amongst themselves instead of assigning to a land shipper.
4134. **MR. KEOUGH:** Oh, so they might be prepared to assign among themselves, but they wouldn't be prepared to assign it to another party that wanted to

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make a deal with them. Is that what you're suggesting?

4135. **MR. McCUTCHEON:** I'm suggesting that they would have the ability under the tariff for one firm shipper to assign to another, which would give, in essence, even more control to the firm shippers, or that particular party.
4136. **MR. KEOUGH:** But earlier, you didn't think that Chevron would be able to get access to this firm capacity. Doesn't that seem a bit inconsistent?
4137. **MR. McCUTCHEON:** No.
4138. **MR. KEOUGH:** All right.
4139. Dr. Gaske, could I get you to turn to your evidence for a moment, please, and specifically I'm -- I think it's Exhibit C5-5d, and again, I think page 4 is likely to be Adobe page 5 or 6, but who knows.
4140. And I'm looking at lines 4 to 6 on that. And I don't know if you need to put before you the response to NEB 1.3 as well, but we'll see if we need to get there.
4141. Are you suggesting there that all of the land shippers are dependent on the Trans Mountain system, or is it just Chevron?
4142. I think Mr. Davies may have talked to you about this.
4143. **DR. GASKE:** Well, it's my understanding that all of them have been depending on that for their supply, yes.
4144. **MR. KEOUGH:** Okay. Now, when you were presenting your testimony -- or preparing your testimony, I suppose, did you investigate the crude supply options that might be available to the Washington State refiners other than transportation on the Trans Mountain system?
4145. **DR. GASKE:** I'm aware that some of them had and have used other sources in the past, but that all of them depend on Trans Mountain in order to get access to Canadian crude. And that's something that they depend on as a mix in the inputs to their refinery.
4146. **MR. KEOUGH:** And I do appreciate your response, but I'm going to try my question one more time.

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4147. In preparing your testimony, did you investigate the crude supply options available to the Washington State refiners?

4148. **DR. GASKE:** Not in any great depth. I simply was aware that they received it from other sources, particularly ANS supply, before it started declining so dramatically.

4149. **MR. KEOUGH:** All right.

4150. Do you understand or did you understand that the Washington State refiners can access crude from waterborne sources?

4151. **DR. GASKE:** Yes.

4152. **MR. KEOUGH:** And would you agree that that opens up a wide number of supply options that are available to them?

4153. **DR. GASKE:** Potentially.

4154. **MR. KEOUGH:** Did you examine the historic use of Canadian crudes delivered via Trans Mountain for the Washington State refiners?

4155. **DR. GASKE:** My understanding is that was based on Trans Mountain's response to NEB IR Request 1.4a which is that table that shows deliveries, monthly deliveries over the last several years.

4156. **MR. KEOUGH:** Okay. Now still on page 4, I'm moving down through lines 11 to 13. Now, you refer to investments made by certain existing customers. Do you see that comment?

4157. **DR. GASKE:** Yes, I do.

4158. **MR. KEOUGH:** Now, are you referring to investments made by Chevron or by any other refiner?

4159. **DR. GASKE:** Yes.

4160. **MR. KEOUGH:** Sorry, "yes" didn't seem to make a lot of sense there. Are you referring to investments made by Chevron alone or by Chevron and other

refiners?

4161. **DR. GASKE:** Oh, okay, I thought you meant any of them.
4162. I'm referring to the fact that -- yes, for example, the Burnaby refinery was built in conjunction with the construction of the pipeline and that's their only source of supply.
4163. I know a number of the other refineries are located where they are because of the Trans Mountain refinery and invested there -- I'm sorry, because of the Trans Mountain pipeline and invested there in conjunction with that being constructed.
4164. **MR. KEOUGH:** You didn't speak to those refiners to understand the purpose of their investments, did you?
4165. **DR. GASKE:** No, I looked at the decision in 1951 that approved the building of the -- the original building of the Trans Mountain pipeline and the fact that it was underpinned by the fact that there would be several refineries built specifically to use that pipeline and were built at that timeframe.
4166. **MR. KEOUGH:** And is it your view that because parties made investments in refineries, they should somehow get preferential treatment in terms of access to capacity on Trans Mountain?
4167. **DR. GASKE:** No. The way Trans Mountain is currently set up, they essentially get equal access under methodology that's been approved by the Board, and I'm not proposing that they have or should get preferential access on that basis.
4168. I am trying to make throughout my evidence the point that providing preferential access in order to develop new markets at a time when the pipeline is apportioning these existing markets pretty severely is the opposite concept.
4169. **MR. KEOUGH:** It is the point you made to Mr. Davies.
4170. **DR. GASKE:** And it's made in my testimony, yes.
4171. **MR. KEOUGH:** Okay. I don't think we needed to hear it three times, but anyway.
4172. Could you go to page 6 of your testimony, specifically lines 4 to 5? And

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there you talk about the land shippers being in significant curtailment each month since late 2010?

4173. **DR. GASKE:** That's correct.

4174. **MR. KEOUGH:** Did you investigate the possible reasons as to why this was occurring?

4175. **DR. GASKE:** Well, it's my understanding that there was a shortage of capacity allocated for the use of land shippers.

4176. **MR. KEOUGH:** I think my question was did you investigate the reasons why that was occurring?

4177. **DR. GASKE:** Well, it seems fairly obvious that there's not enough capacity to accommodate everybody that's trying to use the pipeline.

4178. **MR. KEOUGH:** Did you investigate as to why they were trying to use the pipeline?

4179. **DR. GASKE:** No, I think that may be addressed in one of the other panel member's evidence.

4180. **MR. KEOUGH:** So you did not?

4181. **DR. GASKE:** No. I was aware of the discussions of the crude spread and the decline in ANS production, but I did not personally investigate that.

4182. **MR. KEOUGH:** Did you investigate the land shippers curtailment situation for the period between the last Trans Mountain expansion in November 2008 and the late 2010 timeframe?

4183. **DR. GASKE:** My understanding is that was based on the evidence of Mr. Gray.

4184. **MR. KEOUGH:** But you did not investigate it as part of your testimony?

4185. **DR. GASKE:** That was not part of my assignment. I relied on his description and investigation of events.

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4186. **MR. KEOUGH:** If we go down to the question and answer number 10 on this page, I just want to ask you a couple of questions, I suppose, from your perspective as a rates expert.
4187. I take it you know all about rate design principles; correct?
4188. **DR. GASKE:** Yes.
4189. **MR. KEOUGH:** And you, I'm sure, know all about the concept of cross-subsidization?
4190. **DR. GASKE:** Yes, I do.
4191. **MR. KEOUGH:** And you know about the principle of cost causation?
4192. **DR. GASKE:** Yes, I do.
4193. **MR. KEOUGH:** And would you agree with me that regulators generally don't think cross-subsidization is a good thing from one group to another?
4194. **DR. GASKE:** Yes, I do.
4195. **MR. KEOUGH:** And, sir, as part of your preparation did you come to understand that with regard to the current dock allocation and the bid premium system, that the proceeds from those bids are credited to all of the shippers on the system?
4196. **DR. GASKE:** Yes, I did.
4197. **MR. KEOUGH:** Can I get you to skip all the way up to page 17 of your evidence, answer number 28? I've got a similar question for you than I think I asked Mr. Gray, because there at lines 18 to 19 you make reference to nominations for land capacity being significantly higher than land capacity. Do you see that?
4198. **DR. GASKE:** Yes.
4199. **MR. KEOUGH:** And in making that statement, are you equating nominations to demand?
4200. **DR. GASKE:** Yes.

4201. **MR. KEOUGH:** Thank you.

4202. Could you flip to page 22? I'm looking at lines 10 through 12, and there you talk about the Firm 50 Application would harm many customers, both by effectively raising their rates with the cessation of the bid premium refunds. Do you see that, sir?

4203. **DR. GASKE:** Yes.

4204. **MR. KEOUGH:** I just wanted to be clear what you're saying there. You're equating a reduction in the bid premium refunds that come from the dock shippers and go to the land shippers as a rate increase? Am I reading that right?

4205. **DR. GASKE:** Well, the effective rates that they pay would go up and essentially the Firm 50 Application would be simultaneously attempting to reduce the benefit that they get from the premiums and reducing their access to capacity.

4206. **MR. KEOUGH:** So was the answer to my question yes, you are equating a reduction in the bid premium refunds that come from dock shippers and go to land shippers as a rate increase? That is what you were saying?

4207. **DR. GASKE:** Well, it's not a rate increase in the same sense that Trans Mountain might go before the Board and ask for a rate increase, but the economic effect of it is an effective change in rates.

4208. **MR. KEOUGH:** Thank you, sir.

4209. Thank you, Madam Chair. Those are my questions.

4210. **THE CHAIRPERSON:** This a great opportune time. It's time for our 20-minute break this afternoon.

4211. Thank you.

--- Upon recessing at 3:01 p.m./L'audience est suspendue à 15h01

--- Upon resuming at 3:23 p.m./L'audience est reprise à 15h23

PAUL GRAY: Resumed

GEOFF McCUTCHEON: Resumed

J. STEPHEN GASKE: Resumed

4212. **THE CHAIRPERSON:** It's your turn, Ms. Lozynsky.

--- EXAMINATION BY/INTERROGATOIRE PAR MS. LOZYSKY:

4213. **MS. LOZYSKY:** Good afternoon, panel.

4214. My name is Kristen Lozynsky, Board counsel, and I can guarantee you I'm probably friendlier than Mr. Keough and Mr. Davies.

4215. So we just have first some questions on high-level goals, and please, these are directed to all of you unless I indicate otherwise.

4216. Could you each provide me with your view as to whether the balancing of apportionment is a reasonable goal for Trans Mountain to pursue and for the Board to consider when making a decision?

4217. **DR. GASKE:** Hi. I guess I'll go first on that.

4218. Balancing of apportionment obviously is something that requires a great deal of trade-off. If you're talking about sort of the formulaic approach that's been suggested where the apportionment amount at each point should somehow be roughly equivalent, I think there are a number of reasons to go more deeply into the question than just a very simple formulaic approach.

4219. Obviously, in the last couple of days there have been some questions as to whether nominations at the dock have been sort of double counted in that some land shippers may be nominating twice. But you really have very high apportionment for both dock and land during the course of the last year.

4220. And I think one of the things that plays a major role in reapportionment in this case is -- and should be of major concern to the Board, is what's the stated goal of the reapportionment. And stated goal of the reapportionment, to a large extent, is to promote new markets, which is not a bad idea. I mean, every business wants to promote new markets.

4221. When it comes at a time when the pipeline is unable to service existing markets, I think it's inappropriate, particularly for a regulated company, but for

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almost any business to try to promote new markets if it can't -- if it doesn't have enough supply to provide the markets it currently has.

4222. And so essentially, by reallocating the capacity in order to promote new markets to have more disappointed customers than you've had in the past is essentially making the problem worse, and so I think you have to look beyond just a simple basic numbers of equitability and also look at what the real goal as stated by the parties is, which is one that I think lends itself to keeping the current mechanisms in place and not replacing them at this time.

4223. **MS. LOZYNSKY:** So then, in your view, it's appropriate for land shippers to continue to experience lower apportionment than dock shippers?

4224. **DR. GASKE:** Well, in the last year I think they've gotten pretty close, so yes.

4225. I think Trans Mountain, in one of its data responses, referred to the fact that the Westridge potential nominations are almost unlimited. It's a big world out there and they could have almost unlimited nominations, whereas the land-based refineries are limited. They have a limited amount of capacity, so it is appropriate that those two numbers could be numerically different.

4226. In considering what's fair and equitable, it shouldn't just be a simple matching up of the nominations and the apportionment percentages.

4227. **MR. McCUTCHEON:** Could I just elaborate a bit on that?

4228. You've heard many times over the hearing that comparing apples and oranges when you compare dock nominations and land nominations, and I just want to reiterate that we are a dock shipper and a land shipper as well, and land shipments are verified. You actually have to have the volume behind those nominations.

4229. Dock shipments, there's no requirement that you have a single barrel or drop of oil in order to put a nomination, and you can submit multiple nominations. You can submit, you know, nominations for multiple cargos, up to the entire capacity of the dock.

4230. And you can put in as many -- you know, the range of bids is wide and I think, you know, Mr. Hinger sort of acknowledged there's probably some components of stink bids in there, people who put in nominations without real

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expectation of winning but just as a bit of a lottery if you do. You don't actually even have to put in a premium. It's actually okay to bid zero premium to the tariff as well.

4231. **MS. LOZYSKY:** So you wouldn't agree that there's excessive nominations on the land?
4232. **MR. McCUTCHEON:** We agree basically that there is -- the land -- there's excessive demand -- well, not excessive. There is currently more demand than supply for the dock and has more supply -- there's more demand than supply for the land.
4233. We just don't believe you can compare purely the nominations -- the percentages that Trans Mountain has given. You can't compare those two numbers. That's not a fair comparison because the methodology, the verification process is different.
4234. **MR. GRAY:** If you don't mind, adding a few notes of my own.
4235. Getting back to, I think, a measure of fair and equitable and trying to select a single measure that is going to be the determination of fair and equitable is a dangerous thing to do, to start with.
4236. And in this case, I think we've heard lots of issues around the numbers that are going into the calculations and how real they are and then, on top of that, in determining -- or the Board has an opportunity to look at a 10-year period going forward where forecasts have been used to generate these numbers. And you're hoping -- if you believe that that's the right metric and you're trying to match those up, you're now depending upon the forecasts.
4237. And I think we've shown that forecasts are almost guaranteed to be wrong. There's just so many factors involved for us to really believe we have a crystal ball -- I think we're kidding ourselves.
4238. So when you take that measure and then use it to lock down for a 10-year period from service and say, okay, well, that -- today that might be fair and equitable based on the forecast, but a year from now, two years from now, it probably won't be fair and equitable any more, but you've put in place 10-year contract on firm service that really is going to eliminate the ability for the system to respond in an efficient way on a monthly basis as it does today.

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4239. **MS. LOZYNSKY:** So, in your view, what is fair and equitable? What would be a fair and equitable arrangement, the current arrangement? And just -- and why?
4240. **MR. GRAY:** I guess we're here today saying yeah, in terms of that current tariff or the proposed Firm 50, we believe that the current tariff is more fair and equitable.
4241. **MS. LOZYNSKY:** Is there something that's more fair and equitable than the current situation and what's proposed?
4242. **MR. GRAY:** I think in the past the current tariff has come about as a result of conversations and negotiations between shippers to come up with a split between land and dock and different means to come to an agreement that was fair and equitable at the time.
4243. And I guess we're now at a crossroads in terms of there's a proposal out there to -- that Trans Mountain has put forward that they believe is more fair and equitable than what has historically been worked out amongst the shippers over the years.
4244. **MS. LOZYNSKY:** Is there ---
4245. **MR. GRAY:** I guess at this point, you know, we would like to maintain the status quo as being more fair and equitable than the proposed Firm 50.
4246. **MS. LOZYNSKY:** And is there certain criterion that we should be looking at that demonstrates the fair and equitable allocation other than percentages? What are the points that we should be looking at?
4247. **MR. GRAY:** That's a challenging question.
4248. **DR. GASKE:** I do know one of the things that the Board has considered in past cases is how easily can a pipeline be expanded. In approving the bid premium approach, it was pretty explicit about -- one reason it approved it originally was the expectation that the problem was going to go away soon.
4249. So I think that has to be an important consideration; what kind of timeline are you looking at before the problem goes away And if you're just going to make the problem worse for the next three or four years, that should be a very important

consideration.

4250. **MS. LOZYNSKY:** And can you just describe how would things be worse for the next three or four years under the Firm 50?
4251. **DR. GASKE:** The purpose of the Firm 50 is to develop new markets that the pipeline ostensibly is not already serving, and that's been a very important part of this whole application.
4252. To the extent that they're unable to satisfy the demand on the pipeline now, going out and serving -- trying to really actively develop new markets just makes it worse. If you're out of capacity and you're trying to find even more customers, it makes the problem worse.
4253. **MS. LOZYNSKY:** So why, in your view, does Trans Mountain seem to be having difficulty getting shipper support for an expansion?
4254. **MR. McCUTCHEON:** I don't know that they are. The last time they went out expansion was, I think, 2006, and they've already, I think, publicly stated that they plan to go out for an open season for expansion, I believe, in the fourth quarter. So obviously Trans Mountain does believe that the time is right for expansion of their system.
4255. We, in fact, did approach them and say -- you know, beg them to put aside this application and sit down with its shippers and start discussing expansion right away.
4256. **MS. LOZYNSKY:** And so what do you think this -- what are your views on the impact the current application will have on support for expansion, particularly, like I asked earlier today, the proposed change to allocation and the change with respect to the refund of the dock premium or the introduction of the firm service fee?
4257. **MR. McCUTCHEON:** I think this application has actually been very harmful. It has put Kinder Morgan at odds with shippers representing, you know, approximately 90 percent of the volume on their system.
4258. It has delayed discussions with its shippers on the topic of expansion, and it has -- you know, if we're to go ahead, it's made things more complicated by creating sort of two tiers of service on the line so that, at the end of the day, they can be coming to land shippers and spot dock shippers looking for support for expansion

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knowing that they already have these firm shippers with the step-up rights who would actually have priority. So I think that will, you know, inevitably complicated things.

4259. I think by eliminating the majority of industry from access to the dock, I think that will drive away people -- producers and, you know, various other shippers -- from looking to the Pacific Rim for market development opportunities. They'll simply say, well, if there's only one cargo -- spot cargo available per month, the odds of success will be so limited that it's really not worth the effort.

4260. And I think those producers, of which Chevron would be one of them, would pursue market development efforts elsewhere, which would probably be the U.S. Gulf Coast looking at, you know, access through Keystone or another project.

4261. So I think it's ultimately going to drive people away from the system because of access. They'll be denied access.

4262. **MS. LOZYNSKY:** So even if an expansion would expand the dock capacity -- that would be the case?

4263. **MR. McCUTCHEON:** It depends a bit on the timing of the -- when you're talking about the open season at the end of the day.

4264. Kinder Morgan has indicated -- obviously, if their planning to go in the next year with an open season for expansion, it kind of indicates to me that they don't need this application. They don't need this first step or an interim step. They obviously believe that the market is ripe now to have these expansion discussions, and I wouldn't disagree with them on that.

4265. I think if there's -- though, again, if there are sort of delays in this expansion discussions, markets can change. If people are, you know, spot shippers, new producers, existing producers or shippers over the dock are excluded from access there, they will focus their efforts in market development elsewhere at the end of the day.

4266. **MS. LOZYNSKY:** Now, it's been stated that Chevron is dependent on the Trans Mountain pipeline for 100 percent of its crude feed stock and other products. Is that correct?

4267. **MR. McCUTCHEON:** Yes, it is.

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4268. **MS. LOZYNSKY:** So in saying that, are you saying that there are no other economic alternatives or there's no alternatives, period?
4269. **MR. GRAY:** There is no economic alternatives, and I think the last eight months where we've been under -- arguably, the last four a severe apportionment, where the refinery's been running at reduced rates, we have been unable to find another source of economic crude and to supply the refinery to make up the difference.
4270. **MS. LOZYNSKY:** Now, I know you had a discussion with Mr. Keough about whether Trans Mountain Pipeline has ever considered firm service, and you said that it's never been offered even.
4271. Have you ever requested firm service?
4272. **MR. GRAY:** I guess you could consider the 2006 open season a firm service offering which Chevron did sign up and for the -- an expansion at that time as part of the open season.
4273. So I guess, yes, it has been offered, unfortunately, the expansion didn't happen and -- because it wasn't fully subscribed and, as a result, we don't have an opportunity for firm service at this point.
4274. And, other than that, I'm not aware of any offerings of firm service.
4275. **MS. LOZYNSKY:** And how about requesting firm service on the existing line?
4276. **MR. GRAY:** I'm not -- I've been in my particular role for the last 12 months and there may have been conversations prior to that that I'm not aware of. But, to my knowledge, at least certainly in the last year, there hasn't been any discussion about firm service.
4277. **MS. LOZYNSKY:** Okay. Mr. Gaske, in your evidence you state that by proposing future expansion rates to firm service shippers, Trans Mountain is in effect proposing to sell two products under a single transportation tariff.
4278. You also state that if the NEB determines that it would be an efficient practice for all pipelines to sell options that provide priority access on any further expansions, there's no reason to bundle the two?

4279. **DR. GASKE:** That's correct.
4280. **MS. LOZYNSKY:** Now, as part of the open season, Trans Mountain offered a number of other benefits including, but not limited to, loading windows, batch priority, redirection of volumes.
4281. Why do you take the position that the expansion rates could be specifically isolated and not the other benefits?
4282. **DR. GASKE:** Well, there are several reasons. One is that if you look at the bidding process they've bundled two products together; transportation on the current system and priority right on a future expansion.
4283. If shippers entered bids in that -- and we don't know who bid or what they bid exactly -- but suppose someone wants transportation on the current system and they have no interest in the option, they might bid a dollar.
4284. Someone else who wants transportation on the current system and is willing to bid fifty cents for that but they're willing to spend another dollar for the option on the expansion, they're going to get the existing capacity even though they're not the one that essentially values the existing capacity the most. So you've probably distorted the market and the bidding process even -- on that.
4285. The other problem I have with it is that we heard this morning that that option was very valuable with some of the winning bidders and it was a big factor to them. Given that you've got two different products being sold as a bundled item and one of them is current transportation, I don't know how the Board determines that the rate for current transportation that will be paid is just and reasonable.
4286. For all we know, if someone bids \$1.45 and they place a \$3 value on that option for future transportation, they're actually getting a lower rate for the capacity they're currently getting. It's such a mish-mash of concepts.
4287. So to go to the -- I think what you were asking also is, what's wrong with selling options on future capacity. I think it's a very novel idea. It would be -- I think an improper thing for a regulator to decide that regulated pipelines can sell options for future expansions at whatever the market will bear, and they can essentially manipulate the value of those options based on whether or not they intend to expand.

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4288. And the more money they can make from people who are hoping they will expand and buying these options, the less likely it is they will actually expand. They'll just keep selling options and never fulfilling them.
4289. So it seems to me that that hardly is consistent with a just and reasonable rate for transportation services or the monopoly position of the pipeline as being the only pipeline to the west coast.
4290. **MS. LOZYNSKY:** Sorry, why would they -- and maybe help me with this ---
4291. **DR. GASKE:** Yeah.
4292. **MS. LOZYNSKY:** Why would they never expand and ---
4293. **DR. GASKE:** Well ---
4294. **MS. LOZYNSKY:** --- just keep selling options?
4295. **DR. GASKE:** Well, they might expand, but they might hold back their expansions because if they can keep on selling options -- the options really have value if the people buying them think that future expansions will not be large enough to serve the market.
4296. If people assume that future expansions are going to be sufficient for everybody who wants capacity to get it, nobody would bother to buy the option. They would just sign up for service when it's offered, when the expansion occurs.
4297. So these options to get priority access to something have value to the extent that the market assumes that future expansions aren't going to be large enough to serve all of the demand in the market.
4298. **MS. LOZYNSKY:** Now, I might not have understood correctly, but I thought the firm service shippers today said the opposite, that it's of more value if the expansions are large?
4299. **DR. GASKE:** I don't think that they said ---
4300. **MS. LOZYNSKY:** Okay.

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4301. **DR. GASKE:** --- exactly that. In fact, an option has really almost no value if everybody assumes that, of course, Trans Mountain's about to expand and serve everybody at the market. You don't have to buy an option to get -- be the priority. Everybody will get the capacity they need so they don't have to pay more than a regulated rate to get it.
4302. **MS. LOZYNSKY:** Do you have any views on the longer-term risk to the Trans Mountain pipeline system stemming from incremental pipeline takeaway capacity from the Western Canadian Sedimentary Basin?
4303. I think you gave your views on the current situation, but I'm thinking longer-term.
4304. **MR. McCUTCHEON:** I think I'll try -- I can try and answer this at the end of the day.
4305. Again, Trans Mountain is a monopoly and it does serve a distinct market at the end of the day. And it is geographically advantaged in terms of -- if you just look at a map and you look at where we're buying crude at Edmonton at one end, it has -- the closest, you know, distance from Edmonton to an international market is actually through Trans Mountain and it's significantly closer than going to other markets in Cushing or the U.S. Gulf Coast.
4306. So if you just -- again, simply looking at a map, it would suggest that Trans Mountain should see, you know, relatively steady and growing demand as production in Western Canada grows, at the end of the day.
4307. Trans Mountain also has the advantage of it has a certain amount of sort of -- I hesitate to use this word "captive a dependent" but I'm a trader here and I'll just -- recognize I don't have any particular meaning behind it, but the domestic shipper, there's -- a third of their pipeline is used by, you know, Chevron and the refined product shippers who really have no choice at the end of the day.
4308. Another large portion is used by the Washington State refiners, at the end of the day, whose again traditional source of crude, Alaska North Slope, has declined, you know, rapidly, at the end of the day. And they still have the only dock in town, so unless a gateway gets built, I think Trans Mountain is safe, at the end of the day.
4309. Its transportation advantages -- it serves unique markets, and that's why at the end of the day, our expectation is it will be full until -- at least until there's an

expansion.

4310. **MS. LOZYNSKY:** So the -- over the 10-year period you wouldn't see that there's any volume risk if all the ---
4311. **MR. McCUTCHEON:** I see very little risk at the end of the day. Again, it has a significant transportation advantage versus barrels that would be leaving Edmonton and heading all the way to the U.S. Gulf Coast.
4312. **MS. LOZYNSKY:** To what extent do you agree with the benefits of the firm service proposal in terms of higher netbacks and positive price impacts for Canadian crude?
4313. **MR. McCUTCHEON:** I don't believe in it. At the end of the day, shippers on Trans Mountain whether they're spot, common carriage or in the future potentially firm service, you buy your crude at Edmonton, that is the market and you pay an Edmonton market price for that crude.
4314. And it's not going to change -- that fact will not change with changing the names of the shippers on the pipeline.
4315. So the difference in the price, you're buying at an Edmonton market price and you're going to sell it at the end of the pipe, presumably if you're going with the dock, at an international price at the end of the day.
4316. That difference between the Edmonton price and the international price falls to the shipper at the end of the day. It does not flow back beyond Edmonton.
4317. So it's -- whether it's positive or negative, ultimately that arbitrage, whatever it is, belongs to the shipper. So at the end of the day, the firm shippers ultimately will capture that arbitrage. That -- it exists now in the form of a bid, a bid is a relative reflection of the difference in price of the crude in Edmonton versus the international price.
4318. That money now flows back into the system and it's rolled on to the toll. In the future that money will roll to the firm shippers. It will not flow back to the producers unless the shipper itself happens to be a producer and moving his own barrels.
4319. **DR. GASKE:** If I could just add to that, is the general economic

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proposition -- you can't prove it one way or the other but general economic commercial arrangements generally suggest that the opposite would happen.

4320. That to the extent that a shipper on Trans Mountain takes on the risk of paying a firm rate and they make an arrangement with someone, say, in Asia, who is agreeing to take a 10-year supply, those parties are taking on additional risk.
4321. They go to Alberta and they buy gas -- or I'm sorry, they buy oil, and essentially if they go to Alberta to buy oil and they start offering a 10-year contract, there are lots of producers in Alberta who probably would like to sign a 10-year contract and, as sellers, they will probably sell at what they think is a discount.
4322. Usually in these long-term arrangement deals, the person who takes on the greater risk, say the person is willing to commit to a long-term purchase, will get a discount, and the seller -- the oil producer, say, in Edmonton, typically will sell at a lower price.
4323. So to my mind, if you're making an assumption about what's likely to happen, the netback will actually go lower. They'll sell at a lower price and there will be a whole lot of potentially producers bidding against each other for that 10-year contract to supply somebody.
4324. **MR. McCUTCHEON:** May I just come at it a different way? At the end of the day the pipeline capacity in this case is an asset. The value of that asset increases when the difference in the price between the price at Edmonton and the international price widens at the end of the day.
4325. So a shipper at the end of the day who owns this asset will make more money when the price -- since it's unlikely they're going to influence the international price, they will make more money when the price of crude at Edmonton is low. The value of the space will go up in that circumstance.
- (A short pause/Courte pause)
4326. **MS. LOZYNSKY:** So earlier today, Ms. Zumwalt with the firm service shippers suggested that integrated companies have an advantage over other shippers. There was discussion of cross-subsidization. Do you have any views on that?
4327. **MR. McCUTCHEON:** I don't think we would agree or even actually understand the premise or what it was said. It's interesting coming from the firm

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shippers because Cenovus is an integrated company as well and I'd argue that maybe PetroChina potentially could be.

4328. So I don't know, I didn't understand that premise myself.

4329. **MS. LOZYNSKY:** That -- possibly this might be it -- that there's a bidding up at the dock because you know it's coming back.

4330. **MR. McCUTCHEON:** Okay. I'll talk to that.

4331. Certainly that topic has come up a lot in the past and has been somewhat controversial. One thing to remember I think is that, you know, Trans Mountain often talks about dock shippers and land shippers but largely they're actually the same group of companies.

4332. So every land shipper is also a dock shipper. And in fact, I'd sort of argue that probably at least some 50 percent or somewhere around 50 percent of the dock shippers typically would be land shippers as well.

4333. It's not really a case of, you know, Peter paying Paul, it's actually Peter paying Peter in this particular case. So it's come up as an issue for people who are exclusive dock shippers but again remembering that a large number of the actual dock shippers are also land shippers.

4334. In fact, to my knowledge, the -- you know, the most frequent largest dock shippers also land ship as well at the end of the day. I think the reality is the money comes back to lower tolls currently which benefit all people, shippers -- whether you're a land or a dock shipper, both benefit from that.

4335. **MS. LOZYNSKY:** And so in your view, companies aren't being unfairly excluded from the dock capacity under the current system?

4336. **MR. McCUTCHEON:** Sorry, being excluded from dock capacity?

4337. **MS. LOZYNSKY:** From accessing the dock.

4338. **MR. McCUTCHEON:** The system ultimately is full, right. Nobody is getting what they want on Trans Mountain pipeline right now, whether you're a dock shipper or a land shipper. You know, that's why the ultimate solution is for Trans Mountain to sit down with its shippers and discuss expansion. It's -- you know, Firm

50 Application does not solve the underlying issue which is a lack of capacity.

--- (A short pause/Courte pause)

4339. **MS. LOZYNSKY:** I was wondering, could you provide your views on the -- that advanced bid process?

4340. **MR. McCUTCHEON:** It was, I think, through our evidence and other people have said this as well, it was brought in, ultimately, to protect people who lost at the bid process.

4341. The nomination cycle basically ends at the end of the Canadian trading window, which is notionally a couple of weeks long. So if you were to lose at a dock bid and it was timed in line with the regular nomination cycle, there would be potential problems moving that crude and selling that crude onto Enbridge pipeline going east. Those reasons still exist.

4342. I know Mr. Hinger sort of suggested that there was no longer problems with apportionment east but in fact, there still is. Enbridge, uncertain of its major pipelines, line 5 and 6b, are still apportioned here for September and, you know, pretty much every major pipeline out of Canada in the last year has been shut down at one point or had its pressure deregulation.

4343. Keystone has been down and various Enbridge lines have been down. Trans Mountain has been down. Express has had a shutdown as well.

4344. You know, we're doing our best as an industry to get beyond these capacity constraints, but we're not there yet. So a spot shipper who'd bid for capacity would still be vulnerable and would face two choices, ultimately.

4345. If he lost at the bid process and, you know, Enbridge turned out to be full, he would have a choice of either shutting down or be forced to potentially sell to a firm service holder on Trans Mountain.

4346. **MS. LOZYNSKY:** So do you see that -- what, in your view, is the value of having everyone bid on the same day?

4347. **MR. McCUTCHEON:** Well, if they all bid two days in advance, I think that's a good thing, at the end of the day, the firm shippers and the spot shippers bid -- well, firm shippers wouldn't bid -- but if they all nominated for dock capacity two

days in advance, that still works.

4348. But to move the spot shipper, the nomination date or the bid date for the spot shipper back to in line with the nomination dates, so, in essence, no advanced bid, that -- those shippers who were bidding for dock capacity in the spot market would be very vulnerable.
4349. **MS. LOZYNSKY:** Would you see it working, though, having bidding on different days, so having the spot ---
4350. **MR. McCUTCHEON:** That's an issue, ultimately, for Kinder Morgan. That's -- you know, I recognize the concerns that, you know, Reynold Hinger brought up with -- and part of the issue is -- so there's another one for spot dock shippers, and Mr. Hinger mentioned this.
4351. There's -- Kinder Morgan has a two-commodity rule, which really goes to the fact that Trans Mountain pipeline does not have enough tanks. So what they've said before is that they cannot guarantee -- if they have a third commodity type over the docks.
4352. So if there's, you know, three different crude types nominated for delivery over the Westridge dock, they may not be able to accept the third.
4353. Under the proposed tariff, the firm shippers would have priority. So, ultimately, they would have first choice of which crude types moved over the dock, which would mean that the spot shipper, at the end of the day, may be forced to ship the same crude type as the firm service shippers.
4354. So I think what Mr. Hinger was acknowledging was that if only the spot shipper bid two days in advance, he would be bidding for some unknown, you know, delivery date in terms of a loading spot and he would not be assured that necessarily he'd get to move the crude type that he wanted.
4355. **MS. LOZYNSKY:** Those are all my questions. Thank you, panel.
4356. I believe Ms. Hales has some questions for you.
4357. **THE CHAIRPERSON:** Ms. Hales?

4358. **MS. HALES:** Thank you, Madam Chair.

--- EXAMINATION BY/INTERROGATOIRE PAR MS. HALES:

4359. **MS. HALES:** So as with Ms. Lozynsky, unless I say otherwise, happy to have anyone jump in and answer any of these questions.

4360. So my first questions relate to Trans Mountain's proposed use of the firm service fee as a customer contribution towards incremental capital projects or preliminary activities in support of expansion.

4361. So I understand that Chevron has challenged this aspect of Trans Mountain's proposal, in part, at least, because of the uncertainty surrounding the nature of the capital projects that may be undertaken and a concern that the projects selected may not benefit all shippers.

4362. Can you confirm this? Mr. Gaske, that was in your evidence.

4363. **DR. GASKE:** Yes. Those were two of the problems that I saw with this, and as a matter of typical regulatory practice, it's highly unusual to say -- require shippers to finance, and finance in advance, projects for their benefit.

4364. The only exception to that that I'm aware of is the capital contribution. Capital contribution concept comes into play when someone requests service and it's an unusually expensive service. They require expensive new facilities that are more than would be reasonable to cover in rolled-in rates.

4365. Essentially, this idea that shippers should finance -- be the ones putting up the finance money for new projects I think is an extraordinarily large step for a regulator to take. The way things have traditionally worked, and worked well, is that if Kinder Morgan or Trans Mountain does not have enough equity capital to do an expansion, they could look for additional equity investors.

4366. And some of those investors could conceivably be people who would ship on the pipeline but, essentially, to tie access to current services to a concept where they want current customers to finance future facilities which may or may not ever happen, is a fairly extraordinarily regulatory precedent.

4367. It's one -- I've seen a proposal like this in the past, and it was pretty handily rejected out of hand by the regulator.

4368. **MS. HALES:** Sorry. What example was that again?
4369. **DR. GASKE:** It was an example in the States where Enbridge's Lakehead pipeline was asking for a surcharge on existing customers so they could raise the capital to do an expansion, and FERC said that's out of the question; it rejected it.
4370. **MS. HALES:** Okay. So could I ask you to turn to B1-2, paragraph 42 on page 14? This is Trans Mountain's application and the list of projects that they would suggest undertaking with the firm service fee.
4371. **DR. GASKE:** I'm sorry, which page?
4372. **MS. HALES:** Sorry. It's page 14, paragraph 42.
4373. So for anyone on the panel, can you point to any of the projects identified by Trans Mountain here that you could agree would benefit all shippers?
4374. **MR. McCUTCHEON:** I would suggest -- again, I'm not an engineer -- but line-wide to bottlenecking projects, I mean, if there's anything Trans Mountain can do to increase overall capacity on the line, they should be doing it.
4375. In fact, if there's anything that they're aware of now, then they should be going to the shippers and CAPP and looking for support for that.
4376. **MS. HALES:** On the question asked, anything else on that list that you could agree would be of a benefit to all shippers?
4377. **DR. GASKE:** There are two things that certainly came up yesterday, was the possibility that they take the dollars, they do preliminary work and then they never do the project. And so it's doubtful that shippers actually benefit from that.
4378. The other possibility is that they take the dollars and they do an expansion that's just large enough to accommodate the firm shippers who paid that option. It's not entirely sure that that then turns out to benefit all shippers. We just really don't know.
4379. **MS. HALES:** So were there not concerns about the concept overall?
4380. But assuming that the Board approves Trans Mountain's application for

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firm service and the projects, let's assume for this purpose, were actually undertaken, are there any preliminary activities or projects that Chevron could support having funded through the firm service fee that you believe would be of benefit to all shippers that perhaps might not be on this list?

4381. **MR. GRAY:** Yeah, I mean, what's shown in paragraph 42 is pretty wide-ranging and I think, in general, anything that's going to increase the capacity of the system would generally benefit all the shippers.

4382. **MR. McCUTCHEON:** I'd just like to add to that. At the end of the day, if Trans Mountain has ideas that will benefit the whole system, they have other avenues of getting that capital.

4383. Historically, as a common carrier pipe, they would sit down and present it to CAPP and to shippers, and if the proposal was reasonable, CAPP would approve it and Trans Mountain would get the money. They don't need to -- if they have, again, brilliant ideas, they don't need a firm service application to get the funding.

4384. **MS. HALES:** All right. I understand.

4385. If the Board were to include a condition on any approval granted that firm service fees could not be spent on a project until that project had received regulatory approval, would that change your views or alter your support for this aspect of Trans Mountain's proposal?

4386. Again, I'm not asking you to support the entire proposal or the concept of firm service, but this aspect alone.

4387. **MR. GRAY:** I think inclusion of checks and balances and how the money is spent would be prudent.

4388. **MS. HALES:** Regulatory approval would be required prior to spending the firm service fees.

4389. **MR. GRAY:** Yes, we would support that.

4390. **MS. HALES:** All right.

4391. If the Board were to include a condition on any approval granted that a formal dispute mechanism be incorporated into the tariff to address disputes

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regarding the use of the firm service fee and that could just cover disputes regarding the nature of the projects undertaken or the ways in which the fees were spent, would that change your views or alter your support of this aspect of Trans Mountain's proposal?

4392. **MR. GRAY:** I would support a formal dispute mechanism. I'm not quite sure if that's answering your question, though.

4393. **MS. HALES:** Getting close.

4394. If you took -- would it alleviate your concerns with respect to this aspect of the firm service proposal?

4395. **DR. GASKE:** From my perspective, it still runs the problem that essentially you have a monopoly pipeline charging monopoly level charges to certain customers and then using that as financing. If they need financing, then they should go to the market for financing or bring in partners.

4396. So I think it's an extraordinary precedent for a regulator to set to have shippers and customers provide the financing, and provide financing based on paying as a group more than a just and a reasonable rate, a total revenue requirement that's greater than the company's total revenue requirement.

4397. **MS. HALES:** So for Chevron, then, those concerns would trump, as it were, any -- would exceed any sense of comfort you could take in this formal dispute mechanism. So you would still have issues with this aspect?

4398. **MR. GRAY:** Yes, that's fair.

4399. **MS. HALES:** If the Board were to include a condition on any approval granted to the effect that Trans Mountain's proposed customer contribution liability account could only be debited after a project obtained its regulatory approval -- and this is similar to the first question -- would that influence or at all alter your support? So they could use the fees, but then they would potentially be at risk of having to pay it back.

--- (A short pause/Courte pause)

4400. **MR. GRAY:** I guess with the caveat that if it were approved, that is an aspect that we would like to see in place.

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4401. **MS. HALES:** So received regulatory approval, so you'd want to go one step further and have it go into service after regulatory approval is granted?
4402. **MR. GRAY:** After regulatory approval was granted.
4403. **MS. HALES:** Okay. Are there any other conditions that the Board could impose that would change your views or cause you to support any aspect of Trans Mountain's proposal? So in this question we're not just limiting it to the use of the firm service fee as a customer contribution.
4404. **MR. McCUTCHEON:** These are difficult questions because I think Chevron is opposed to just about every aspect of this application, so it's hard to find anything at the end of the day that we find acceptable in it.
4405. **MS. HALES:** Are there any conditions that -- if the Board were to approve firm service, are there any conditions that could be imposed that would alleviate the many concerns that you've raised about the proposal?
4406. **MR. McCUTCHEON:** I think the big issues for Chevron obviously are -- dock land allocation is a huge one, but even as we are a dock shipper and a large upstream producer, so even within the dock category itself, I'm -- we're not happy with, you know, losing access to the only dock available to western Canadian producers.
4407. So again, I can't find any roses here, I'm afraid.
4408. **MS. HALES:** So more than a condition; you would want one aspect of it rejected outright?
4409. **MR. McCUTCHEON:** We would like you to reject it.
4410. **MS. HALES:** I understand.
4411. Again, here we'll assume Trans Mountain's proposal for firm service is approved. If Trans Mountain does not spend the firm service fees in the customer contribution account within a reasonable amount of time, market circumstances change; it's no longer prudent to undertake some expansion, what is your view on what should happen to those firm service fees that have been collected?

4412. **MR. GRAY:** We'd like to see them refunded to all the shippers.
4413. **MS. HALES:** Okay. Moving onto some issues related to use of the scarce capacity.
4414. Mr. Gaske, if I understand your evidence correctly, you're of the view that while it may be economically efficient to use an auction to allocate capacity over the short term, it would be inappropriate and economically inefficient over the long term as for, among other reasons, it would preclude economically efficient shipments at the time?
4415. And you also discussed some other concerns with Ms. Lozynsky earlier this afternoon about shippers selling -- the firm service shippers selling options.
4416. **DR. GASKE:** Right. It's one thing to auction off capacity on a short-term, sort of opportunistic basis to deal with a short-term problem, and I think that's why the Board said that was an important factor; it was that it's a short-term thing they expected it to be.
4417. When you sell capacity on a long-term basis and it's regulated monopoly capacity, if the assumption is that the capacity is going to remain short for 10 years, then it's more appropriate to pay a regulated rate on a long-term basis, because in the long term the pipeline or any other regulated entity should be expanding as the market expands.
4418. And this, in essence, is a challenge to the notion of a regulated rate to extend it to the idea of 10-year service contracts that, quite frankly, if there were plenty of capacity people wouldn't bid above the cost-based rate. So what they're bidding on is a monopoly rate.
4419. And, in fact, in economics, the way this was set up is what we would call first-degree price discrimination. The bidders who got capacity, each one paid the amount that they bid so that in first-degree price discrimination what a monopolist does is it extracts as much as it possibly can from each shipper, and it's highly discriminatory -- it gets as much as it can from the highest value shipper and then it gets what it can from the next highest and divides the market up that way.
4420. So this whole idea of auctioning off long-term capacity at more than a cost-base regulated rate I think is a major step for this Board to take and would be a precedent that I don't believe I've seen anywhere else.

4421. **MS. HALES:** So your view, as I took from this as well, is that
inexpansion, really, is what the appropriate response would be ---
4422. **DR. GASKE:** That's ---
4423. **MS. HALES:** --- for the term?
4424. **DR. GASKE:** That's exactly what the Board should be encouraging as
much as possible.
4425. **MS. HALES:** At the end of all this. Great.
4426. And it's fair to say that capacity issues -- there are capacity issues on
Trans Mountain that have required it to allocate capacity, and that in fact has been the
case for some time?
4427. **DR. GASKE:** That's the evidence, yes.
4428. **MS. HALES:** And I take Mr. McCutcheon's point earlier that you would
disagree with Trans Mountain's position that it has been unable to secure any firm
commitments in support of expansion.
4429. However, I think, just to put the proposition to you, I think Trans
Mountain's evidence would certainly be that it has faced issues getting commitments
for an expansion?
4430. **MR. McCUTCHEON:** The last time they had an open season, I believe,
was 2006. I don't believe they've had one since. Although, as I said, they've
announced that they plan to have one by the end of the year.
4431. So I don't -- when they say they haven't received support, I'm not sure
what they mean by that, whether that's just through discussions with people they've
had, but to my knowledge they haven't had another open season, so they haven't truly
tested the market.
4432. **MS. HALES:** Is it your understanding that since 2006 they've gone out
for bids for non-binding interest or something of that nature?
4433. **MR. McCUTCHEON:** I don't recall that.

4434. **MS. HALES:** Okay. So we'll have you disagree with Trans Mountain on that point, but we'll take as a point that Trans Mountain has taken the view at least that they have had challenges on this. That's all I'm -- that is their evidence.

4435. **MR. McCUTCHEON:** I think the market has changed a lot in the last little while, and perhaps they just, at the end of the day, in their evaluation of the market, believed that, you know, at the start of this process that there wasn't an appetite for expansion, however they determined that.

4436. Clearly there is probably now, and they obviously believe that. In fact, they're saying they're going to have an open season. And we would not disagree with that in terms of it is an appropriate time for Trans Mountain to sit down with its shippers and discuss expansion.

4437. **MS. HALES:** So, Mr. Gaske, just based on some of the views and issues and points that we've just discussed; namely, I understand there are capacity issues on the Trans Mountain pipeline. Expansion would be the most economically efficient way to address this issue over the long term.

4438. Trans Mountain, at least, takes the position that shippers aren't supporting expansion in sufficient numbers and you've raised several issues with the use of the firm service fees to fund an expansion for a host of reasons you outlined.

4439. What would be an optimal way to address capacity issues over the long term, in your view?

4440. **DR. GASKE:** Over the long term would be to expand and do it in a normal process. In the meantime, to continue essentially the system as it is in place.

4441. **MS. HALES:** And if Trans Mountain were unable, for some reason, to get shipper commitment to an expansion, is there any other methodology that you could envision that could be adopted?

4442. **DR. GASKE:** Well, if there's a large amount of demand and no shipper support for an expansion, then it's probably not an economically viable option.

4443. That, in part, depends on what kinds of conditions Trans Mountain places in the open season, but there's obviously rapidly growing production in Alberta and if any more of it is going to come out of the West Coast, somebody has to expand or

build a new pipe.

4444. **MS. HALES:** So eventually they will come is the thought?

4445. **DR. GASKE:** If ---

4446. **MS. HALES:** Sorry?

4447. **DR. GASKE:** I was going to say there is an enormous network for pipelines all over North America that do get built, have been built, so my assumption, based on experience, is that there should be shipper support, unless Trans Mountain asks for something that's very onerous on the shippers.

4448. **MS. HALES:** Okay. If -- and this again for anyone on the panel -- if Trans Mountain were to eliminate the delivery destination categories and simply have all shippers bid for capacity on an uncommitted basis each month, how would this contribute to the efficient use or development of the Trans Mountain pipeline?

4449. **DR. GASKE:** I'm sorry, could you repeat the question? You spoke very quickly.

4450. **MS. HALES:** Sorry, I get that sometimes.

4451. If Trans Mountain were to eliminate the delivery destination categories and simply have all shippers bid for capacity on an uncommitted basis each month, how would this contribute to the efficient use or development of Trans Mountain Pipeline, in your view?

--- (A short pause/Courte pause)

4452. **MR. McCUTCHEON:** Again, there's probably some economic theory in there that, you know, I can't talk to. I think from a practical manner it becomes very difficult in terms of -- again for Chevron who's entirely -- refineries entirely dependent on the system, we would be bidding monthly for capacity.

4453. So we wouldn't, again, be assured of actually getting it on a monthly basis which arguably we're in a similar position today. But it could go from a completely all or nothing basis I guess if you're bidding.

4454. And there is, again, I think that would extend to the Washington State

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shippers, it's the question, again, is if you were unsuccessful, you know, how would you mitigate those losses and again if you look at -- I shouldn't be speaking for the -- I was told not to do this, speak for the guys in Washington State, but, you know, if you -- cargos, you know, they may not be in sync ultimately if you're bidding for Canadian capacity and didn't get it. You may not be able to cover with, you know, or purchase quickly enough a cargo from elsewhere to fill that gap at the end of the day.

4455. So there's a couple of just operational type issues that would make it extremely difficult.
4456. **MS. HALES:** So more practical issues.
4457. Any other thoughts before we close that off?
4458. **MR. GRAY:** Your question included a bid for this base not just an allocation.
4459. **MS. HALES:** Yes.
4460. **MR. GRAY:** The all or nothing -- when you're trying to run a rateable business and having some security of supply would make that an impractical option.
4461. **MS. HALES:** In response to an NEB IR1.10 -- I'm not sure we need to bring it up, but you discussed different scenarios where -- Dr. Gaske, where reserves from market based tolls can offset pipeline costs to various degrees. So if you want that it's B8-2 -- no, it doesn't make sense, it's C5-65, page 18.
4462. **DR. GASKE:** This is the NEB request number 1.10?
4463. **MS. HALES:** Yes.
4464. **DR. GASKE:** Yes.
4465. **MS. HALES:** And that, in your view, is a fairly common practice?
4466. **DR. GASKE:** Yes, sort of crediting revenues from ancillary type services. I think that was part of the basis for the Board's decision last time that it was not too different from performance penalty fees and that it should be just credited back to the revenue requirement.

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4467. **MS. HALES:** And in that IR, you also indicated that in this proceeding the market base services, which is the bid premium, does not come close to paying for Trans Mountain's cost of the pipeline and as a result the continued crediting of bid premiums to other shippers remains, in your view, appropriate. Is that correct?

4468. **DR. GASKE:** Yes.

4469. **MS. HALES:** So your comments in relation to that IR was in regards to the bid premium, but presumably the same would follow on your views for the firm service fee?

4470. **DR. GASKE:** Yes.

4471. **MS. HALES:** So perhaps we could take a principle from that then that comparing revenues from market base services with total revenue requirement is an appropriate way to assess whether market distortions or any cross-subsidization exists; is that fair?

4472. **DR. GASKE:** As a general matter, yes.

4473. The problem that you obviously face is just how much revenue do you have and you can do a variety of different things to fix that problem. One is to change the way the revenues are collected so that you reduce how much actually come in if you think it's a problem that too much is coming in.

4474. What's being proposed here is that Trans Mountain keep the money and use it for investment purposes. But I think when you get fairly large dollars coming in, you have to tailor it to the specific circumstances. Right now I don't see it as an overwhelming problem.

4475. But the IR request was sort of the extreme case where the extra revenues coming in paid for the entire revenue requirement, then what do you do. And it is a difficult problem and you'd probably have to reassess a -- how you're -- or how Trans Mountain is charging for access to the system and then what you do with the revenues.

4476. **MS. HALES:** Okay. I'll just follow up on one point that you made.

4477. You say where there's too much coming in, you'd adjust how much is coming in. How would that work where it's a -- where there's a bid, either for the

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firm service fee or for the premium for that matter where it's really the market that's bidding then?

4478. **DR. GASKE:** Well, there are a variety of ways of doing that; there are different kinds of auctions that work. In electric markets it's very common to hold a market clearing for wholesale markets where no matter what you bid, everybody gets the clearing price. So that's one answer.

4479. Another possibility is that you decide that this isn't quite working right and you go back to the old system which was a lottery. I understand the lottery -- that the reason the Board and parties wanted to do away with the lottery was that the capacity was going to people who didn't really want it but then they were reselling it in a secondary market.

4480. And so the whole purpose was to capture some of these rents from the scarcity of the pipeline, to capture those rents for the benefit of all the shippers. And that's what's happening now.

4481. So I understand some people are raising a question of wow, are there too many benefits from capturing these rents. And so it may be more appropriate for the Board to revisit the entire question rather than accept what Trans Mountain has proposed here which is really in conjunction with a firm service or a Firm 50 Application.

4482. **MS. HALES:** In assessing whether a cross-subsidization exists would it, in your view, also be relevant to consider the number of shippers who pay the market base fees?

4483. **DR. GASKE:** That could be an important consideration and certainly it has an impact on -- if you have large numbers of people paying market based fees and just a handful of people paying regulated rate, it's quite possible that you recover the entire revenue requirement without charging anything to the regulated customers and that would be inappropriate. They should cover their marginal cost of service.

4484. But you asked about cross-subsidy, and that's a term that has come up several times during the hearing. And as an economist, my ears perk up when I hear it because in economics, cross-subsidy has a very specific definition that I believe is probably different from the definition that a lot of people in the room are using.

4485. And in economics, it -- the cross-subsidy concept is that you don't have a

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cross-subsidy as long as everyone pays the marginal cost of their service and no one is paying more than the stand-alone cost of serving them.

4486. And on a pipeline where you have large economies of scale, the difference between those two numbers can be very large, so that there can be a very large range of splitting up the dollars between different customer groups in which an economist would say you don't have a cross-subsidy.

4487. I think what some people in the room were talking about is if we just take the average price per barrel across there -- across the system, then if somebody pays more than the average, they're subsidizing somebody who pays less than the average. And technically, that's not really a cross-subsidy. To establish a cross-subsidy requires more analysis than that.

4488. **MS. HALES:** Okay, so based on that definition and with that in mind, would you believe that a consideration of the extent to which those paying market based fees, so it would be the firm service shippers, pay more than their cost of service or the extent to which they pay more than their cost of service? Would that be a relevant consideration?

4489. **DR. GASKE:** It's relevant to consider just how far you're getting from what would be the allocated embedded cost of service, and it's, unfortunately, one of the sub-optimal problems that Trans Mountain and the Board faces, is there's a shortage of capacity; how do you deal with it.

4490. And one of the ways that they -- the parties have come up to deal with it is that for some of that capacity they charge a monopoly rate. And then what do you do with that if you don't want the company to keep that; you want the company to earn its regulated rate of return. And it is a very difficult balancing act.

4491. **MS. HALES:** And the last one, how about the duration of time -- and I think I know your view on this, but the duration of time over which the market based fees paid are well in excess of a party's cost of service, so that would, in your view, also impact or the existence of a cross-subsidy?

4492. **DR. GASKE:** Yes. I think -- I know I indicated in my evidence that it's appropriate to -- it can be appropriate to use market based bidding for short-term services to allocate to the market.

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4493. To the extent that you start using it for long-term services, you're starting to move pretty dramatically away from the concept of a regulated rate for the services. You're pretty well abandoning that concept.

4494. **MS. HALES:** Thank you. And those are my questions. Thanks very much.

4495. **THE CHAIRPERSON:** Thank you, Ms. Hales.

4496. Madam Mercier?

--- EXAMINATION BY/INTERROGATOIRE PAR MEMBER MERCIER:

4497. **MEMBER MERCIER:** Hello. I'll try to be brief; it's late.

4498. Just two questions, one very like technical, and it's mostly because maybe it will alert the parties to what the Board is looking for.

4499. It's just about when we talked about the advanced bid process and why we've heard that the two-day advance and the one-day advance, but I've got a question remaining in my mind, what I've heard you say this afternoon is that one of the issues is the lack of tanks near the dock to handle different product.

4500. But my question is, does the two-day make a difference in the fact that there is like not enough tanks? You know, like I know it's very complicated, all those nominations, allocations, but since you mentioned that, I was wondering. So that's the one part.

4501. And the other thing that I want you to address as well is the fact that everybody nominates on the same day, usually, and for Trans Mountain it's two days ahead. Does it create gaming in the system?

4502. So there is two questions, the gaming because of the -- possible gaming or whatever, or loss, and then the two tanks -- you know, like not enough tanks.

4503. **MR. McCUTCHEON:** Okay, I'll do my best. Probably better explained by my friends at Kinder Morgan.

4504. But the regular pipeline nominations for Trans Mountain and Enbridge and every other pipeline occur on one date. The only thing that is different in

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industry is that Kinder Morgan, in a dock bid process, holds this auction two days in advance of the regular noms. That's the only thing that's different.

4505. What they're proposing now is to move that back in line with the regular land nominations. The reason it was set forward in the first place was that, you know, people who were bidding on the dock and lost, they would still have a chance to meet the deadlines of the other pipelines.

4506. So they'd still have a chance to -- if they're unsuccessful with the bid, they could turn around and they'd have, you know, a day and a half or so to sell or nominate their crude on another pipeline. So they wouldn't be risking shut-in production just by deciding to bid on Trans Mountain Pipeline.

4507. What Trans Mountain now faces in issue is they really need, at the end of the day, probably all of the dock shippers, whether you're firm or a spot shipper, to be nominating on the same day. And the reason being is they can't accommodate, you know, all the requests of the dock shippers, and there's a priority system they've established saying that firm shippers have first priority to crude type and I believe to loading dates.

4508. So it's difficult for them to have the spot shipper go in advance of that to bid for cargo to be successful, yet the guys who actually have priority are coming two days later, and they're going to tell you what crude type, what load dates they want after the fact.

4509. So you really need, you know, all the dock shippers to nominate on the same date at the end of the day. Ideally, you know, for a spot shipper we'd say keep the two-day advanced nomination process.

4510. Sorry. Did I address the two products sort of issue?

4511. **MEMBER MERCIER:** Well, I was just curious.

4512. **MR. McCUTCHEON:** It's just there's a lack of tanks, yeah. There's a lack of tanks, and that's really the constraint as to how many, you know, different commodities that Trans Mountain can ship over the dock in any given month.

4513. So they've reserved the right to limit the different crude types over the dock to two, which, again, as we've mentioned earlier, has become a problem for the spot shipper in that he doesn't have priority.

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4514. So even if you bid and were successful, at the end of the day you may not get to move the crude type that you want. You would be sort of beholden to the firm shippers and the crude types that they chose.

4515. **MEMBER MERCIER:** So now that we could have five firm shippers, whatever product they will be shipping will dictate what the spot shipper -- product they will have to do. And people who kind of know about it ---

4516. **MR. McCUTCHEON:** Well, the problem is that the spot shipper, he's not going to know about it at the end of the day. He may just be told after he's bid, you know, whether he can move that crude type or not.

4517. And that's -- the problem hasn't really been discussed in this forum, but there is not one Alberta crude type; there is literally dozens of them at the end of the day. And each producer -- again, we get back in the marketing and development side -- is going to want to do market development on his individual, you know, crude type. And this is why it, again, becomes a bit problematic.

4518. **MEMBER MERCIER:** Good. My other question is for Mr. Gaske, and it's a little conversation.

4519. So we've read your submission. We heard this afternoon -- yeah, I'm going to move here -- what you've been talking about, so I was listening to what you were saying, and then I understood that the firm shipper would have this kind of illegal power -- illegally power for 10 years.

4520. That's the point -- you know, I'm just paraphrasing what you were trying to say. I'm just trying to go to the logic here.

4521. So what you said, if the capacity is still needed they should be expanding. So the real -- maybe -- and what you don't want is to have people who have this capacity. It's like this huge asset and they're making money over a long, long period of time.

4522. So is the issue that as a condition the Board should, could, or ask Trans Mountain to hold an open season at different dates? Would that kind of solve the issue of a few shippers having lots of capacity and holding power?

4523. **DR. GASKE:** It could eventually. It obviously will take a few years

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before they could actually get an expansion in place, but I think the Board should be encouraging it.

4524. The holding of the market power is a concern, but I think a much larger concern, at least in my evidence, is the concept that the Firm 50 Application is designed to increase the size of the market to -- at a time when they can't serve their existing market.
4525. And that's probably the most important point I have in there is I think they have a -- reading the Board's decisions, pipelines have an obligation to accept all oil that is tendered and implicitly in that they should be expanding as people tender oil, and the Board should be concerned about making sure that they fulfil that obligation.
4526. And the Board even grants exceptions to that in forms of allowing apportionment, and that's the way the Board typically has written these decisions in the past, that the exception to the obligations of the Act to accept all tenders is apportionment.
4527. There's nothing in the Act that says that pipelines have an obligation to develop new markets, to go out and actively and aggressively try to find new markets, and there's nothing wrong with them doing so, it's a good thing for them to do that.
4528. It's a bad thing for them to do that when they can't serve their existing markets and what they want to do is cut back on service to those markets while they do it.
4529. So in the interim, until they have the capacity to serve new markets, some of those new markets will nominate and bid and get access on the same terms as everyone else if you continue what you're doing and reject the current application. And that will be probably the best outcome for the next several years, until such time as there's an expansion.
4530. **MEMBER MERCIER:** Okay. No, that's clear. So it's not as much holding open season as to the delay for the actual project to be online that you're talking about.
4531. So we all have -- from what we heard in the last few days, there is this rosy view of the West Coast being the gold rush. So if we take it -- you know, and the market can change. Anything could happen.

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4532. So I just want maybe to talk about the fact that the firm service shipper would have a 10-year commitment. And would you agree that there would be a possibility that the market could change and then they would be on the hook for 10 years for firm service?
4533. **DR. GASKE:** Yes.
4534. **MEMBER MERCIER:** And does that, in your view, kind of balance, or is it like something to be ignored?
4535. **DR. GASKE:** It would balance if they weren't in this chronic apportionment situation and if the concept wasn't to offer the firm service as a mechanism for promoting new markets. It's not uncommon for pipelines or other fixed-cost entities to sign customers up for firm commitments, and I don't think there's anything wrong with that concept, in general.
4536. In this case, the opportunity was not offered to everyone. It was offered solely to dock shippers. I have to presume from the application, the way the justification was written, was it was not available to everyone because they were afraid that land shippers might take them up on it and it wouldn't be used to develop new markets.
4537. The purpose was to develop new markets and overseas markets so they didn't offer it to everyone, and I think that should be a concern for the Board.
4538. **MEMBER MERCIER:** And if it would have been offered to everyone there would still have been people apportioned. So would your position be the same?
4539. **DR. GASKE:** Well, there's so many different parts of this that have problems with them but, as a general principle, I don't see a problem with firm service, and particularly firm service to underwrite an expansion.
4540. On the oil pipeline side, the Board has approved firm service deals essentially to finance and underwrite expansions or new -- brand new pipelines.
4541. In this case, there isn't going to be an expansion. This is just a shifting of capacity from one group to hopefully -- at least for Trans Mountain -- hopefully a new market they'd like to serve and the abandonment of the existing one.

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4542. **MEMBER MERCIER:** Okay. That's responsive. Thank you.

--- EXAMINATION BY/INTERROGATOIRE PAR THE CHAIRPERSON:

4543. **THE CHAIRPERSON:** I just want to follow-up, Dr. Gaske, on what you just said about the new market and abandoning the existing one.

4544. Yes, there has been discussion about new market opportunities. This is how I understood it and tell me if there is something wrong with my understanding.

4545. The fact that you would be sending to a market with no conditions with respect to whether you're going to be able to deliver or not, could this not be labelled as a new market, because you're able to sell -- you know, whether you sell to your existing market with no condition and hence different terms and conditions or to a market that favours the certainty, which in this case can be the overseas market, wouldn't all of that be considered, in your opinion, as a new market?

4546. I did take the evidence -- and tell me where I went wrong -- to mean that abandoning existing buyers who are willing to buy under terms and conditions where -- it just gives an instrument of being better able to market your product with certainty.

4547. So I wonder if you could comment on that.

4548. **DR. GASKE:** Certainly. One of the crucial parts of the proposal is the idea to shift 27,000 barrels a day over to the dock. So, essentially, that's the aspect of it that's abandoning an existing market, and the stated purpose of that is they've been -- they think that they can develop a new market somewhere else.

4549. And I think it's a good thing for businesses to develop a new market, but I don't think anyone would disagree with the idea that particularly a regulated monopoly, for them to be unable to fulfil their obligation to accept all oil tendered from the existing people, for them to say, "Well, we're not providing enough service to you, but we want to aggressively go out and find some new markets to serve while we can't serve the ones we already have," that's where I really have a problem.

4550. I don't know if that answers your question?

4551. **THE CHAIRPERSON:** No, that's fine.

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4552. I'm going to move on to my second point of questioning. I heard you, Mr. McCutcheon, talk about the solution would be for Trans Mountain to sit with its shippers and then discuss whatever possibilities to resolve the issues.

4553. And yesterday, when I was speaking to the Trans Mountain panel -- I'm not sure if you were there -- I asked them about whether there is a collaborative process, and the answer was, "Yes, there is a collaborative process, but we never got to agree on criteria of moving forward."

4554. So it sounds to me like this is a dysfunctional family, and I ---

4555. **MR. McCUTCHEON:** You're not far wrong. Mr. Hinger again was correct; there are challenges, but historically we have done, I think, a reasonable job as an industry of coming to solutions.

4556. So this is not the first time we've seen an apportionment on Trans Mountain and this is not the first time we've talked about changing allocation between dock and land. Again, historically there was even further allocation.

4557. There was an export and a domestic as well, and what we did was to sit down as an industry and look at historical, look at the future and ultimately negotiated a settlement amongst ourselves.

4558. In this particular case, Trans Mountain never did that. They came up with a proposal and had an open season, and there was no opportunity for anything else. Nothing else was put on the table.

4559. But is it hard to negotiate a solution? Sure. Everybody has different interests and we have an oversubscribed monopoly and giving to one means taking away from another. There's no easy solution here other than expansion.

4560. The unfortunate part of expansion is that I think according to Kinder Morgan's estimates, that even if there was agreement today, you're looking at more of a 2016 timeframe for completion. So whatever we put in today, we're going to have to live with probably for the next presumably five years.

4561. **THE CHAIRPERSON:** And then you also spoke of Trans Mountain having to come to the shippers. How about the shippers going to Trans Mountain if there is a request?

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4562. **MR. McCUTCHEON:** Shippers call up Trans Mountain all the time. I think they've acknowledged that. So we have met with them, as have others, and in this particular circumstance, asked them again to look at sitting down with their shippers immediately to discuss expansion and to abandon this application because we believe this application is counter to the good of the majority of their customers and industry as a whole.

4563. **THE CHAIRPERSON:** One thing, Dr. Gaske, you have said, "The Board should revisit," what did you mean by that? Revisit the whole thing on the TMX system? And how would the Board go about doing that if there is no application by any party to look at this?

4564. **DR. GASKE:** I think you're probably -- if I understand correctly, you're probably referring to the concept of revisiting, how they auction off capacity at the dock. And my point there was that if it's perceived to be a problem, that too many dollars are coming in, then it would be a reasonable thing for the Board to revisit.

4565. I'm not an expert on the Board's authority to essentially call its own investigation or proceeding, but if it really is considered to be a problem -- I don't necessarily think that it is -- so my colloquy earlier was under the assumption that if people really perceive it to be a problem, or if Trans Mountain thinks it's a problem, it could bring an application forward.

4566. It doesn't have to be tied to this Firm 50 Application. Or if other people think that it's a big problem, that there are too many dollars coming in from the bidding process, someone else could make a complaint and then you could have another proceeding devoted solely to that topic.

4567. I wasn't necessarily suggesting that that's what the Board ought to do, but if there are enough people who think it's a problem, that would be a better way to address it than what's been proposed in this proceeding.

4568. **THE CHAIRPERSON:** Another thing you said, the Board should encourage expansion. And I wonder how would a Board who would have to make a decision on an expansion encourage expansion?

4569. **DR. GASKE:** Well ---

4570. **THE CHAIRPERSON:** I wonder if from your experience with the FERC or other regulatory boards -- I know you're not very much familiar with the

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NEB.

4571. **DR. GASKE:** I'm sorry.

4572. **THE CHAIRPERSON:** I think we lost the mics.

--- (A short pause/Courte pause)

4573. **THE CHAIRPERSON:** Is it working? Yes, it is working.

4574. **DR. GASKE:** Am I on?

4575. **THE CHAIRPERSON:** You're on.

4576. **DR. GASKE:** Okay. Good.

4577. I don't know the statutory or legal authority of the Board to order an expansion, but I've worked with dozens of pipelines all over North America and when capacity is short, I can't think of any situation off the top of my head that hasn't had the company very eager to do an expansion.

4578. As regulated entities with an allowed rate of return, they make more money by essentially building more facilities, providing more service, and that's what regulation should be encouraging.

4579. There's the alternative model with an unregulated monopolist who, rather than expanding, they simply raise their prices and maximize the revenue they can collect.

4580. Right now on the Trans Mountain system and in the proposal that's coming forward, it is a proposal to maximize revenues, charge more than that regulated rate.

4581. They'll ostensibly give the dollars back to the other customers, but the characteristics of the Firm 50 proposal look more closely like what you'd have with an unregulated monopolist, and I haven't seen many utilities and regulated pipelines who have not been eager to expand in order to increase their rate base and the amount of service they provide, and that's a good thing. Regulation should be substituting for competition.

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4582. If there were competitive pipelines paralleling Trans Mountain, they'd be in a race with each other to expand and -- but if there were enough competitive pipelines, the Board wouldn't even need to regulate it. The market would -- competition in the market would encourage efficient expansion and efficient pricing.

4583. Unfortunately, they've essentially put that in your lap to take the place of that competition.

4584. **THE CHAIRPERSON:** And hence we spend quality time together.

4585. **DR. GASKE:** Yes. And indeed, it is.

4586. **THE CHAIRPERSON:** Thank you very much. These are all my questions.

4587. Any re-direct, Mr. Bergner?

4588. **MR. BERGNER:** There is none.

4589. **THE CHAIRPERSON:** I'd like to thank the panel very much for your valuable contribution, and I do wish you, Dr. Gaske, safe travel.

4590. And with that, you are released.

4591. **DR. GASKE:** Thank you.

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

4592. **THE CHAIRPERSON:** Well, given the time of the day, I think we will get together tomorrow at 8:30 and start with the shippers' group.

4593. Have a good night, everyone.

--- Upon adjourning at 5:11 p.m./L'audience est ajournée à 17h11