

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



**Hearing Order MH-002-2012  
Ordonnance d'audience MH-002-2012**

**Chevron Canada Limited (Chevron)  
Priority Destination Designation (PDD) Application**

**Chevron Canada Limited (Chevron)  
Demande de désignation de destination prioritaire (DDP)**

**VOLUME 1**

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

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

**March 26, 2013  
Le 26 mars 2013**

**International Reporting Inc.  
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Imprimé au Canada

HEARING ORDER/ORDONNANCE D'AUDIENCE  
MH-002-2012

IN THE MATTER OF Chevron Canada Limited (Chevron)  
Application for a Priority Destination Designation (PDD)  
dated 19 June 2012 (the Application)

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

Hearing held in Calgary (Alberta), Tuesday, March 26, 2013  
Audience tenue à Calgary (Alberta), mardi, le 26 mars 2013

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

D. Hamilton	Chairman/Président
B. Vergette	Member/Membre
J. Ballem	Member/Membre

## **APPEARANCES/COMPARUTIONS**

### **APPLICANT/DEMANDEUR**

Chevron Canada Limited  
- Mr. Chris W. Sanderson, Q.C.  
- Mr. Keith Bergner

### **INTERVENORS/INTERVENANTS**

#### **Associations**

Canadian Association of Petroleum Producers (CAPP)  
- Mr. Nick Schultz

Communication, Energy and Paperworkers Union (CEP)  
- Mr. Steven Shrybman

#### **Companies / Compagnies**

BP Canada Energy Group ULC  
- Mr. Dennis P. Langen  
- Ms. Sheliza Ladha

Imperial Oil Limited  
- Mr. Don Davies  
- Mr. Nathan A. Baines

Phillips 66 Canada ULC  
- Mr. Gordon Cameron  
- Ms. Katie Slipp

Shell Trading Canada  
- Mr. Gordon Cameron  
- Ms. Katie Slipp

Tesoro Canada Supply & Distribution Ltd.  
- Mr. R. Brian Wallace, Q.C.  
- Mr. Matthew D. Keen

Trans Mountain Pipeline ULC  
- Ms. Marie Buchinski  
- Ms. Cassia Prentice

#### **Governments / Gouvernements**

Alberta Department of Energy  
- Mr. Colin King

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

- Mr. David Cox  
- Ms. Jessica Lim

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<b>No.</b>	<b>Description</b>	<b>Paragraph No./No. de paragraphe</b>
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--- Upon commencing at 8:32 a.m./L'audience débute à 8h32

1.                   **THE CHAIRMAN:** Good morning, ladies and gentlemen, mesdames et messieurs.
  
2.                   My name is David Hamilton, and I am the Chair of the Panel established by the National Energy Board to consider the Application by Chevron Canada Limited, which I will refer to as Chevron, for priority destination designation.
  
3.                   My fellow Panel Members are, to my right, Mr. Bob Vergette, and, to my left, Mr. Jamie Ballem.
  
4.                   On June the 19<sup>th</sup>, 2012, Chevron applied to the National Energy Board under Section 1.58 of the Trans Mountain Pipeline Tariff - Rules and Regulations Governing the Transportation of Petroleum, No. 88 for an Order designating Chevron's Burnaby Refinery as a priority destination.
  
5.                   On August the 3<sup>rd</sup>, the Board issued Hearing Order MH-002-2012 setting down the Application for an oral hearing.
  
6.                   On the 5<sup>th</sup> of December, 2012, due to the number of confidential filings and related motions, the Board modified the timetable of events and rescheduled the oral portion of the hearing to commence today.
  
7.                   Prior to getting into the specifics of how this hearing will unfold, I would like to go over a few safety issues.
  
8.                   If it is necessary to evacuate this building, we will exit the room using the doors you used to enter the building -- sorry, enter the hearing room and then across the hall and slightly to your right. Emergency exit signs will guide to the nearest stairwell. Please remain calm and exit in an orderly fashion.
  
9.                   Once outside, please ensure that your entire group has evacuated the building. The designated muster point is at the east end of the Bank of Montreal building on the corner of 7<sup>th</sup> Avenue and 2<sup>nd</sup> Street.
  
10.                  And also, men's -- the men's washroom is out -- as you go out through the hearing room door, it's to the right and -- around to the right. The women's washroom is around to the left. And I must inform that the washroom code for

**Opening remarks  
Chairman**

- the women's washroom is 243. Don't ask me why the men don't need a code for their washroom.
11. At this time, I'd like to introduce you to Board staff that is in the room with us today. Seated at the front of the Panel -- in front of the Panel is Mona Butler, our Regulatory Officer. On the right-hand side of the hearing room is Board counsel, David Cox, followed by Jessica Lim.
  12. Seated next to Board counsel are our specialists, Cory Temple, our economist; Darcy Johnson, our hearing manager; Colette Craig, supply and market specialist; Craig Rubie, financial regulatory analyst. At the end is Sonia Stauch who is a paralegal, and she is keeping track of the undertakings of confidentiality. And you will be dealing with her for receiving the confidential transcripts.
  13. We also have our court reporter seated in front of me and to my right, is Sean Prouse.
  14. All of our staff are wearing NEB ID badges for ease of identification. Feel -- please feel free to approach them if you have any questions or concerns.
  15. Following the registration of appearances and the preliminary matters, the Board will follow its customary practice for hearing evidence by the Applicant and intervenors. Chevron's witness panel will be presented first.
  16. With each party's witness panel -- when each party's witness panel is presented, the panel will first adopt its written evidence and will then be available for cross-examination by registered parties, generally in the order indicated in the Order of Appearances. However, there will be some modification to the Board's usual procedure due to the confidential filings in this proceeding.
  17. Parties have advised the Board that there are matters related to the confidential information that they wish to raise during the oral phase of this proceeding. Following the cross-examination of public evidence for each panel, all persons other than Board Members, Board staff, the court reporters, the sound technician and those persons who have executed all current undertakings of confidentiality will be excluded from the room prior to the confidential information being addressed.
  18. Chevron and intervenors who have filed confidential information will

**Opening remarks**  
**Chairman**

- be asked to verify on the record that they have no objections to the remaining people in the room. Once the in camera session begins, nobody else will be allowed to enter the room. The doors will be monitored by security personnel. The procedure will continue in camera until such time as the confidential information is no longer being addressed.
19. The Board expects that parties will cooperatively arrange questioning and other submissions, such that the confidential information can be raised in an efficient manner with minimum disruptions to the proceedings and inconvenience to the parties.
  20. Room 8001 is available for the use of parties and interested observers. This room has a video broadcast of the public sessions and wireless internet access. People who have not signed an undertaking of confidentiality are encouraged to make use of this room to help limit disturbance during the hearing.
  21. The Board will provide direction on final argument at the end of the first week of the hearing as to whether it wishes to hear final argument orally.
  22. Please note that the public portions of these proceedings are being broadcasted live on the Board's internet website. During the proceeding, the Board will be viewing exhibits electronically. As parties refer to a document by its exhibit number, it will be produced electronically on the screens on the side of the room.
  23. As set out in the Board's procedural update dated March the 12<sup>th</sup>, in advance of cross-examination, other parties' counsel are requested to provide the Regulatory Officer with a list of the documents you intend to refer to so that these documents may be retrieved expeditiously. Please provide the information set out in the chart form, Attachment 2 to the procedural update.
  24. Please refer to the procedural update, copies of which are available at the back of the room, for further information. In addition to setting out the electronic exhibits procedure, the procedural update provides information on filing new exhibits, receiving undertakings, obtaining transcripts and accessing online broadcasts of the hearing.
  25. Also at the back of the room are a number of other documents, including the exhibit list and the order of appearance. We ask that you check the exhibit list before registering your appearance, and if you wish to file a document

**Opening remarks**  
**Chairman**

- that does not appear on the list, you may seek leave to do so when you come forward to register.
26. Please note that if you file an exhibit during the hearing, you may also file the document with the Board's electronic document repository. If any party is uncertain of the process or requires information concerning entering of exhibits or other hearing-related matters, we ask that you speak to Board counsel.
27. The Board will sit today until about 1:30. For the remainder of the hearing, the Board intends to sit from 8:30 a.m. until 1:30 p.m. daily. A short break will be taken each day mid-morning.
28. We will reassess and, if necessary, revise the schedule as the hearing progresses. The Board will not sit on 29<sup>th</sup> of March or April the 1<sup>st</sup> on account of Easter weekend.
29. To assist everyone with scheduling, it would be helpful if counsel or party representatives could regularly keep our Board counsel up to date with their estimates, broken out between the cross-examination of public and confidential information, and inform them of any scheduling difficulties or special timing concerns.
30. As always, we are concerned that the hearing time be used effectively and efficiently as possible. We remind parties that the principal purpose of cross-examination in our proceedings is to clarify and test the evidence that has already been filed. Parties should not restate their own evidence or repeat cross-examination questions that have already been asked.
31. Finally, please remember to turn off your microphones when you have finished speaking.
32. I will now ask Board counsel to assist with registration of appearances and filing of exhibits. Parties will be called in the order of which they appear on the Order of Appearances. When your name is called, please come forward and register your appearance. Please state your name and the organization that you represent.
33. In addition, please indicate whether you wish to be called upon for cross-examination and whether you have any preliminary matters. Any

**Registration of appearances**

**Ms. Lim**

preliminary matters will be addressed following the registration of appearance.

34. Ms. Lim, please proceed with registration of appearances.
35. **MS. LIM:** Thank you, Mr. Chair.
36. I will first call on the Applicant, Chevron Canada Limited...?
37. **MR. SANDERSON:** Thank you, Ms. Lim, Mr. Chairman, Members.
38. Chris W. Sanderson for Chevron Canada Limited and with me and appearing in front of you from time to time will be Mr. Keith Bergner and I will have some procedural matters to speak to once we're through the appearances.
39. **MS. LIM:** And for the record, do you have any witness panels that you wish to cross-examine?
40. **MR. SANDERSON:** I'm sorry. Yes, Ms. Lim, I will wish to cross-examine the witness panels of BP, Tesoro, Imperial and P66/Shell.
41. **MS. LIM:** Thank you.
42. Next for the associations, I will call the Canadian Association of Petroleum Producers...?
43. **MR. SCHULTZ:** Good morning, Mr. Chairman, Members of the Board. My name is N.J. Schultz, appearing for the Canadian Association of Petroleum Producers.
44. We have no preliminary matters and we do not wish to be called for cross-examination. Thank you.
45. **MS. LIM:** Communication, Energy and Paperworkers Union...?
46. **MR. SHRYBMAN:** Good morning, Mr. Chairman, Members of the Panel. My name is Steven Shrybman. I represent the Communication, Energy and Paperworkers Union Canada.
47. I wish to be called upon for cross-examination or should I say, I'm reserving my right to be called upon. We'll see how things progress of BP,

Imperial, Tesoro, Shell and P66.

48. As indicated in correspondence sent to the Board, I do have a preliminary matter with respect to the availability of our witness that I'd like to raise with you when the opportunity arises.

49. **MS. LIM:** Thank you.

50. Next for the companies, I would like to call Astra Energy...?

--- (No response/Aucune réponse)

51. **MS. LIM:** BP Canada Energy Group ULC...?

52. **MR. LANGEN:** Good morning, Mr. Chairman, Panel Members. My name is Langen, L-A-N-G-E-N, initials D.P, counsel for BP Canada Energy Group LLC (sic). Appearing with me is my colleague Sheliza, S-H-E-L-I-Z-A, Ladha, L-A-D-H-A.

53. We have no preliminary matters and we do intend to cross-examine Chevron. Thank you.

54. **MS. LIM:** Cenovus Energy Inc...?

--- (No response/Aucune réponse)

55. **MS. LIM:** Devon Energy Inc...?

--- (No response/Aucune réponse)

56. **MS. LIM:** Imperial Oil Limited...?

57. **MR. DAVIES:** Good morning, Mr. Chairman, Members. My name is Don Davies and I'm appearing for Imperial Oil. With me is Nathan Baines who is internal counsel with Imperial Oil.

58. We do wish to be called for the cross-examination of Chevron and we have no preliminary matters. Thank you.

59. **MS. LIM:** Keyera Corp...?

--- (No response/Aucune réponse)

60.                   **MS. LIM:** Nexen Marketing...?

--- (No response/Aucune réponse)

61.                   **MS. LIM:** Suncor Energy Marketing Inc...?

--- (No response/Aucune réponse)

62.                   **MS. LIM:** Phillips 66 Canada ULC...?

63.                   **MR. CAMERON:** Good morning, Mr. Chairman, Members of the Panel. Gordon Cameron for Phillip 66 Canada ULC, and while I'm here, I'll make an appearance for Shell Trading Canada as well. And with me is Ms. Katie Slipp, S-L-I-P-P.

64.                   And we do wish to be called for cross-examination of Chevron and the CEP. Thank you.

65.                   **MS. LIM:** Plains Midstream Canada ULC...?

--- (No response/Aucune réponse)

66.                   **MS. LIM:** Suncor Energy Marketing Inc...?

--- (No response/Aucune réponse)

67.                   **MS. LIM:** Tesoro Canada Supply & Distribution Ltd...?

68.                   **MR. WALLACE:** Good morning, Mr. Chairman, Members. R.B. Wallace appearing on behalf of Tesoro. Appearing with me will be Mr. Matt Keen.

69.                   We would like to be called to cross-examine Chevron, the Canadian Energy and Paperworkers, and we don't have any preliminary matters. Thank you.

70.                   **MS. LIM:** Trans Mountain Pipeline ULC...?

71. **MS. BUCHINKSKI:** Good morning, Mr. Chairman, Panel Members. Marie Buchinski, appearing on behalf of Trans Mountain Pipeline ULC and with me will be Cassia Prentice, P-R-E-N-T-I-C-E.

72. At this time, we would like to be called for cross-examination of the Chevron panel, and we do have one preliminary procedural matter to bring before the Board. Thank you.

73. **MS. LIM:** Next for government departments, I'd like to call Alberta Department of Energy...?

74. **MR. KING:** Good morning, Mr. Chair, Panel Members. My name is Colin King; I'm legal counsel with the Government of Alberta Department of Energy.

75. We need not be called upon for cross-examination. We have no preliminary matters. We may provide final argument. Thank you.

76. **MS. LIM:** British Columbia Ministry of Energy, Mines and Natural Gas...?

--- (No response/Aucune réponse)

77. **MS. LIM:** Member of Parliament, Burnaby-Douglas, Kennedy Stewart...?

--- (No response/Aucune réponse)

78. **MS. LIM:** And lastly, for the Board; to my left, Board counsel, David Cox. I am Jessica Lim, also Board counsel.

79. We do have a preliminary matter where we would like to give an exhibit number to the Trans Mountain Pipeline Petroleum Tariff No. 88 for ease of reference.

80. **THE CHAIRMAN:** Perhaps, Ms. Lim, we could just deal with that now since you're on your feet, if that's acceptable?

81. **MS. LIM:** Sure. Could we get an exhibit number for that?

82. **THE REGULATORY OFFICER:** That will be Exhibit A-27.

**--- EXHIBIT NO./PIÈCE No. A-27:**

*Trans Mountain Pipeline Petroleum Tariff dated April 4, 2012*

83. **MS. LIM:** Thank you.

84. That concludes the registration of appearances.

85. **THE CHAIRMAN:** Thank you, Ms. Lim.

86. And perhaps we'll deal with preliminary matters in the order they were raised. And Mr. Sanderson for Chevron?

87. **MR. SANDERSON:** Thank you, Mr. Chairman.

88. There's no real controversial matters but just some, what I will call, housekeeping things that I could probably conveniently address now. The first I think relates to exhibits.

89. On Friday last, Chevron filed electronically and served on all the parties a letter under my -- over my signature which contained both an opening -- written opening which is in the back of the room and has been distributed to the parties, and an update with the most recent data that was covered in reply evidence filed earlier.

90. I've spoken with Board counsel. I've spoken with my friends. I don't understand there to be any objections to two things: One is that that form an exhibit and be accepted as such, and the second is that the opening that was circulated, I've suggested be most conveniently read by one of the panel members.

91. It was kept very succinct on purpose to accommodate that but as the Board will have been advised, I believe there will be a video in the middle of it, and so the flow will work a lot better if the witness can read it.

92. So I've canvassed counsel in connection with that; I don't understand

- there to be any objections to that procedure and, with your leave, when we get there, that's the way I'd like to proceed.
93.           Maybe I'll run through my list and then -- and then let others comment. With respect to confidentiality, Mr. Chair, you've laid out a procedure. I really don't have anything to add to what you said. I just wanted to thank Board counsel in particular for their efforts in helping us come fairly smoothly, I think, to a process which no doubt will evolve as we go. There are some complexities to it, but I think all the parties are cooperating well to make that work, and so I'm confident that it will. And so thanks to Ms. Lim and Mr. Cox for that.
94.           With respect to aids to cross-examination for this first panel, we were rather swamped yesterday with aids. I have for the first two cross-examiners, as I'm anticipating the order, shared those with the panel, but they were voluminous, and so we've done the best we can.
95.           But I'm giving the Board a heads up that this panel may need time to look at some of them, in particular because the aids from BP were exceedingly voluminous with little direction as to what in them was to be addressed with the panel. And so I'm going to ask for Mr. Langen's indulgence to give this panel time to look at whatever he puts to them.
96.           Finally, with respect to the order of cross-examination, I'm guessing that Ms. Buchinski is going to speak to that. If I'm wrong in that, I'll rise again after she's finished, but she indicated she had a preliminary matter and that may relate to the order of cross.
97.           It probably more appropriately comes from her and I think that's all I need say now other than, and I'll call this a preliminary matter, we will be tendering one panel, which you see before you now, and I'll introduce them in due course.
98.           They will cover both the direct testimony and the application of Chevron and the reply because I think that's more convenient and expeditious. I will reserve the right though, if there is unanticipated evidence that comes up during the intervenor cases, I want to be clear on the record, that we reserve the right to recall anybody we need to respond to new matters that arise during the oral phase of the hearing.
99.           Thank you.

100. **THE CHAIRMAN:** Thank you, Mr. Sanderson.

101. I think we'll deal with the matter of aids to cross and the panel once we get into the panel cross-examination. I won't regard -- you know, I appreciate the notification, but we'll deal with those as they arise during the cross-examination.

102. On the -- and on the matter of the additional information, you have requested the leave of the Board to file what is referred to as the further update and for the most part, the further update contains information updating information that has been previously filed. So as you indicated, there has been no objections by other parties. Am I right you indicated that?

103. **MR. SANDERSON:** Yes indeed, I understand there to be none.

104. **THE CHAIRMAN:** Thank you.

105. Therefore, the Board grants Chevron leave to file the further update and the Board also finds that portion of the further update that Chevron referred to as confidential material does fall within the provisions of order PO-001-MH-002-2012. And so any party receiving copies of it will be bound by the Board's orders, rulings and the executed undertakings.

106. Ms. Butler, perhaps could you please assign exhibit numbers to the non-confidential materials and the confidential materials in the further update.

107. **THE REGULATORY OFFICER:** For the non-confidential materials, it will be Exhibit B-32.

**--- EXHIBIT NO./PIÈCE No. B-32:**

*Letter from Chris Sanderson, Q.C. to the National Energy Board - Re: Chevron Priority Destination Designation (PDD) application*

108. **THE REGULATORY OFFICER:** And for the confidential matter, it will be Exhibit -- hang on -- E1-8.

**--- EXHIBIT NO./PIÈCE No. E1-8:**

*Further Update by Chevron - Confidential Materials*

109.           **MR. SANDERSON:** Thank you very much.
110.           **THE CHAIRMAN:** And I'll address the matter of the opening statement and the video when we actually -- once your panel's been sworn and put in, Mr. ---
111.           **MR. SANDERSON:** Of course. Thank you, Mr. Chair.
112.           **THE CHAIRMAN:** The next preliminary matter, Canadian Association -- sorry, Canadian Association -- no, it's Communications, Energy and Paperworks Union, Mr. Shrybman.
113.           **MR. SHRYBMAN:** Thank you, Mr. Chair.
114.           But really two matters; one is that the availability of our witness -- I'm not sure how things will progress this week. David Coles is the president of the Union. He is engaged in a national executive board and national board meeting this Thursday and for part of -- I'm not sure whether they're meeting on Good Friday, but certainly this Thursday in Ottawa.
115.           So if we get that far, he won't be able to attend on Thursday and so I will try to make arrangements with other parties to move him down on the list so he would follow parties, I suppose, that are adverse in interest, but we really don't have an alternative there and I just wanted to alert you to that problem.
116.           There's a minor -- I hope it's just a minor procedural problem with respect to the undertakings for confidentiality. I believe I filed all the undertakings, but they don't yet appear on the list. We have receipts for them. I've brought additional copies with me today if there's any issue in that respect, but it's certainly our -- my intention to have filed all proper undertakings, so I can listen in to those portions of the hearing.
117.           **THE CHAIRMAN:** Perhaps on the first issue, yes, we were notified. You did notify us on the availability of Mr. Coles and if we would work with, as we progress, we'll see how it goes. We've no -- the Board has no idea how the speed that we'll go, I'm sure, as all other counsel will as well, so I would encourage you to -- which you have been doing -- consult with our Board counsel and with the parties on the matter.

## Preliminary matters

118. And also, we could check with Board counsel on the matter of your undertakings of confidentiality, whether for some reason, if they have been inadvertently missed or whatever. So please consult at the break with Board counsel on those matters.
119. **MR. SHRYBMAN:** Thank you very much.
120. **THE CHAIRMAN:** No, thank you.
121. Trans Mountain, I understand, is the next preliminary matter, Ms. Buchinski.
122. **MS. BUCHINSKI:** Thank you, Mr. Chair.
123. The Order of Appearances that was sitting at the back of the room this morning shows the company parties in alphabetical order and with respect to the order of cross-examination of the Chevron panel this morning, Trans Mountain was hoping to be kind of first up in terms of the companies to do the cross-examination. And we've spoken to counsel for P66/Shell, counsel for Tesoro, BP, Imperial, as well as Chevron, and there appears to be no issue or opposition to Trans Mountain proceeding first on cross-examination.
124. Having said that, if there is any opposition, perhaps now is the time to have that discussion.
125. **THE CHAIRMAN:** I appreciate you having the discussion ahead and the Board certainly doesn't have any opposition to it and I don't see anybody else rising to have any concern with it and so, with that, then we'll proceed in that order. You'll be called up first to cross-examine.
126. **MS. BUCHINSKI:** Thank you very much.
127. **THE CHAIRMAN:** That on my list appears to be on the preliminary matters and I don't see anybody else rising to raise any. So perhaps we could proceed then, Mr. Sanderson, with -- with your panel.
128. **MR. SANDERSON:** Indeed we could, Mr. Chairman, and happily, the panel is seated already.

**Chevron Canada Limited Panel  
Examination by Mr. Sanderson**

129. So we can move straight into introducing them to you, which I'm pleased to do. I'll start, I think, by just introducing you to each of the panel members, beginning with Mr. Kory Judd.
130. Mr. Judd is going to serve as the chair of this panel and, facing you, he is third from the end, and I'll introduce him in a moment. On his far left, furthest away from you is Mr. Paul Gray. I'm sorry, on his far right. I'm dyslexic this morning.
131. On his right is Mr. Paul Gray. On Mr. Judd's left is Mr. Eric Fountain. All three gentlemen are employed by Chevron. And on the far left, closest to you, is Mr. Skip York. Mr. York is an expert with the firm of Wood Mackenzie.
132. And if I could ask all of those witnesses to be sworn, I will lead them through a brief direct.

**HAROLD YORK:** Sworn

**ERIC FOUNTAIN:** Sworn

**KORY JUDD:** Sworn

**PAUL GRAY:** Sworn

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

133. **MR. SANDERSON:** Thank you, Ms. Butler.
134. Now, Mr. Fountain, I'm going to begin with you, if I might, and ask you if you've got a copy of Exhibit B-29a in front of you?
135. **MR. FOUNTAIN:** I do.
136. **MR. SANDERSON:** And that's a letter, Mr. Chair, dated March 15<sup>th</sup>, 2013, again over my signature.
137. If I could draw your attention, Mr. Fountain, to paragraph 1 of that letter, you'll see a list of exhibits there.
138. Do you see that?
139. **MR. FOUNTAIN:** I do.

**Chevron Canada Limited Panel  
Examination by Mr. Sanderson**

140.           **MR. SANDERSON:** Have you reviewed that material and the answers that are contained in the IRs there?
141.           **MR. FOUNTAIN:** I have.
142.           **MR. SANDERSON:** Do you have any corrections or changes you'd like to make to any of that evidence?
143.           **MR. FOUNTAIN:** I have two corrections I would like to submit. One is to Exhibit B-07c, page 7 of 16.
144.           **MR. SANDERSON:** Go ahead.
145.           **MR. FOUNTAIN:** Did we want to put it up or?
146.           **MR. SANDERSON:** There it is. It's up now.
147.           **MR. FOUNTAIN:** Okay. It's in the answer to that -- to IR 4(a).
148.           **MR. SANDERSON:** Can you give us a page number?
149.           **MR. FOUNTAIN:** Page number 7 of 16.
150.           In this answer, we provided the cost per barrel for the truck to -- a rail to truck alternative and the rail alternative of the \$14 and the \$10.50. In retrospect, the question asked for the increase.
151.           And so I would suggest that the sentence should be at the -- what is it -- the second sentence should have the addition of "less the TMPL tariff" because the delta is that value less the TMPL tariff.
152.           **MR. SANDERSON:** And to be clear, Mr. Fountain, are you referring to the sentence that begins:
- "As outlined in Chevron's evidence...?"*
153.           **MR. FOUNTAIN:** That's correct.
154.           **MR. SANDERSON:** And you'd add those words at the end of that

sentence?

155. **MR. FOUNTAIN:** At the end of that sentence.

156. **MR. SANDERSON:** Thank you.

157. **MR. FOUNTAIN:** The second submission I'd like to discuss is in B-32c, which is the further update that was recently submitted, I think, Friday, page 5 of 6, and the answer to Question 5, and this is Line 12 -- yeah, Line 12.

158. The words "that Chevron", toward the end of Line 12 here, need to be struck from that sentence.

159. **MR. SANDERSON:** Thank you.

160. **MR. FOUNTAIN:** That's all.

161. **MR. SANDERSON:** And have you also reviewed the only other evidentiary filing of Chevron, which is Exhibit B-30?

162. **MR. FOUNTAIN:** I have.

163. **MR. SANDERSON:** And do you have any corrections or changes you'd like to make to that?

164. **MR. FOUNTAIN:** No, sir.

165. **MR. SANDERSON:** Thank you.

166. With those changes, to the best of your knowledge, are the answers that you've made reference to true?

167. **MR. FOUNTAIN:** They are.

168. **MR. SANDERSON:** And do you adopt those answers as Chevron evidence in this proceeding?

169. **MR. FOUNTAIN:** I do.

170. **MR. SANDERSON:** Thank you.

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171. Now, Mr. Gray, if I could ask you to turn your attention to the same exhibit, 29a, have you also reviewed the material that's listed there?

172. **MR. GRAY:** I have.

173. **MR. SANDERSON:** And you've reviewed -- have you found any corrections or changes you'd like to make to any of that evidence?

174. **MR. GRAY:** I have two corrections?

175. **MR. SANDERSON:** Could you please provide those?

176. **MR. GRAY:** Exhibit B-25e, Reply Evidence, Part 3, on page 4 of 9.

177. **THE REGULATORY OFFICER:** Excuse me, could you repeat that, please?

178. What exhibit is it?

179. **MR. SANDERSON:** I'm sorry; it's Exhibit ---

180. **MR. GRAY:** B-25e.

181. **THE REGULATORY OFFICER:** 'E'? Okay.

182. **MR. SANDERSON:** Page 4 of 9 was it, Mr. Gray?

183. **MR. GRAY:** That's correct, 4 of 9.

184. Question and Answer 6, in the last sentence, it starts -- two thirds of the way down through Answer 6 reads:

*"Only CP is only allowed..."*

185. And I'd like to strike the second "only".

186. So it would read:

*"Only CP is allowed to..."*

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187.           **MR. SANDERSON:** I see. Thank you.
188.           And the second correction, Mr. Gray?
189.           **MR. GRAY:** Is in Exhibit B-25c, Question and Answer 18, on page  
10, very last line on the page.
190.           The last line currently reads:
- “Second, even it could, ...”*
191.           And it should read:
- “Second, even if it could, ...”*
192.           **MR. SANDERSON:** Thank you.
193.           And have you also reviewed, Mr. Gray, Exhibits B-30 and the Exhibit  
B-32 filed this morning?
194.           **MR. GRAY:** Yes.
195.           **MR. SANDERSON:** And are there any corrections or changes you’d  
like to make to any of that evidence?
196.           **MR. GRAY:** No, there are not.
197.           **MR. SANDERSON:** With the changes you’ve identified to the  
earlier exhibits, to the best of your knowledge, are the answers in all that material  
true?
198.           **MR. GRAY:** Yes, they are.
199.           **MR. SANDERSON:** And you adopt those answers as Chevron’s  
evidence in this proceeding?
200.           **MR. GRAY:** I do.
201.           **MR. SANDERSON:** And, Dr. York, if I could turn to you for a

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moment and ask you a similar question with respect to Exhibit B-29a but, in your case, refer you to Paragraph 1 again of Exhibit 29a and, then, ask you also to turn to page 3 of that letter.

202.                   And let me ask you whether you've reviewed all of the material that's listed on page 3 in the box beside your name?

203.                   **DR. YORK:** Yes, I have.

204.                   **MR. SANDERSON:** Thank you.

205.                   Are there any corrections or changes you'd like to make to any of that evidence?

206.                   **DR. YORK:** No, there is not.

207.                   **MR. SANDERSON:** All right.

208.                   And I also just wanted to raise briefly with you your CV. I understand that that -- that your CV was filed along with Exhibit 29a.

209.                   Are you familiar and did you prepare that CV?

210.                   **DR. YORK:** Yes, I did.

211.                   **MR. SANDERSON:** And does that accurately set out your qualifications and experience?

212.                   **DR. YORK:** Yes, it does.

213.                   **MR. SANDERSON:** And, Mr. Chair, I wasn't proposing to qualify Dr. York any further; he's been qualified before this Board on a number of occasions in the past speaking to the same areas he is here.

214.                   I'm quite happy to do it if any of my friends -- and this is an issue I haven't actually canvassed with them because I didn't think it was likely to be necessary, but I'm happy to qualify him if necessary. Otherwise, I'll be tendering him as an expert to speak to oil refinery infrastructure and transportation economics.

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215.           **THE CHAIRMAN:** I don't see any objections, Mr. Sanderson,  
continue.
216.           **MR. SANDERSON:** Thank you, Mr. Chair.
217.           And to the best of your knowledge are the answers you've provided in  
the evidence to which we've just referred true?
218.           **DR. YORK:** Yes they are.
219.           **MR. SANDERSON:** Now, Mr. Judd if I could lastly turn to you, as  
the chair of the panel, I understand you've agreed to serve as chair of this panel?
220.           **MR. JUDD:** That's correct.
221.           **MR. SANDERSON:** And do you similarly have Exhibit 29a in front  
of you?
222.           **MR. JUDD:** I do.
223.           **MR. SANDERSON:** And have you reviewed the evidence that's  
indicated as -- as being adopted on behalf Chevron in that letter?
224.           **MR. JUDD:** Yes, I've reviewed the evidence.
225.           **MR. SANDERSON:** Do you have any further corrections or changes  
beyond what you've heard from Mr. Gray and Mr. Fountain?
226.           **MR. JUDD:** No I don't.
227.           **MR. SANDERSON:** Have you also reviewed Exhibit B-30 and  
Exhibit B-32, which is reply evidence filed this morning?
228.           **MR. JUDD:** Yes I have.
229.           **MR. SANDERSON:** Any corrections or changes to that evidence?
230.           **MR. JUDD:** None.
231.           **MR. SANDERSON:** With the changes that Mr. Fountain and Mr.

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Gray have given this morning, to the best of your knowledge, are the answers in the material I've just referred to true?

232. **MR. JUDD:** Yes.

233. **MR. SANDERSON:** And do you adopt those answers as Chevron's evidence in this proceeding?

234. **MR. JUDD:** I do.

235. **MR. SANDERSON:** Mr. Judd, I understand you've prepared an opening statement for Chevron's evidence, as well as a brief video that will serve to introduce the Board to the Chevron site; is that correct?

236. **MR. JUDD:** That's correct.

237. **MR. SANDERSON:** And Mr. Chair, this is where I would like to have Mr. Judd just provide that opening statement which as I said this morning has been circulated and then in the middle of it I think we're set up to run that video for about six minutes.

238. **THE CHAIRMAN:** And if I understand you correctly it's not normally Board procedure ---

239. **MR. SANDERSON:** Of course.

240. **THE CHAIRMAN:** --- to have opening statements that have been filed and any evidence that's already been filed but in this case I understand that there's -- you've canvassed and there's been no objections to this proceeding this way; am I correct?

241. **MR. SANDERSON:** That's correct, Mr. Chair.

242. **THE CHAIRMAN:** Therefore then the Board is happy to proceed with -- now the panel has been sworn and allow Mr. Judd to continue.

243. **MR. SANDERSON:** Thank you.

244. Mr. Judd, if you could give the opening statement on behalf of Chevron.

**--- OPENING STATEMENT BY/DÉCLARATION D'OUVERTURE PAR MR. JUDD:**

245.           **MR. JUDD:** Thank you.

246.           Good morning, Mr. Chairman and Members, and thank you for allowing me to briefly explain why Chevron is appearing before you today.

247.           This application is really not about Chevron. Rather, it is about the distinct characteristics of a refinery in Burnaby, British Columbia, that happens to be owned by Chevron. I want to begin by providing a little history of, and perspective on that refinery.

248.           Chevron has operated a refinery in British Columbia since the 1930s. At its original location the refinery had no pipeline access and received all of its crude by marine shipments.

249.           In the early 1950s Chevron and a number of other oil companies in the region determined that it would be advantageous to refine Alberta crude oil in preference to importing crude for British Columbia's needs and provide financial support to Trans Mountain to construct a pipeline to facilitate that objective.

250.           In support of that effort Chevron constructed a new refinery at a location near the old one, capable of being supplied with light Canadian crudes by pipeline from Alberta. The pipeline to Chevron's new refinery was completed in 1954 and the former refinery site was converted to a blending and shipping terminal. Chevron has relied on the pipeline for its crude supply ever since.

251.           Over the years, Chevron has steadily increased its capacity at the refinery to its present level of 57,000 barrels per day. During that time it has been a consistent and important engine of economic activity in the Municipality of Burnaby, presently employing 216 employees and using approximately 200 contractors.

252.           Its overall contribution to Burnaby and British Columbia's economy is significant. The decision in the 1950s to establish the Burnaby refinery and rely on the pipeline for service has been a good one for Chevron, Alberta producers and the public interest at large.

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253. Chevron has, until recently, had a reliable supply of suitable light crude feedstock. Alberta producers have had a guaranteed market for this crude oil and the public has seen this crude delivered to the refinery in a -- delivered to the refinery in a manner that has proven to be both a safe and environmentally benign means of transportation.
254. The issue raised in this application is whether these benefits will be available to all three constituencies going forward. Chevron believes they can and should be but only if the Board takes steps to ensure that the Burnaby location continues to receive supply from the pipeline.
255. The need to provide secure -- to provide secure supply by pipe results from the unique locational characteristics of the refinery; Chevron has prepared a short video to illustrate these characteristics. And as the video starts I'll orient you to the City of Vancouver. And in the lower left portion of the screen you'll see the airport.
256. So the first zoom shows the City of Burnaby. The Burnaby refinery is located by the body of water Burrard Inlet shown near the top of the picture. You'll notice that the refinery is broken into two parts, with the tank farm to the west or left of the screen as you face it and the refinery to the east or right of the screen on the point of land.
257. As we zoom into the tank farm you'll see a residential area of Burnaby to the southwest of the tank farm and refinery. And you will see the proximity of houses to the tank farm in particular. As we move to a street view you'll see the proximity of the houses to the edge of the tank farm. The path shown in the foreground is the TransCanada Trail which we'll also see later in the video. So here's a zoom of -- of that area.
258. As we zoom back out from the tank farm you see the Stanovan wharf in the top frame with the rail loading -- unloading facilities immediately to the south just on shore. In between the tank farm and the refinery is located Confederation Park.
259. So we'll move over the refinery area. As you look at the refinery you'll see Burrard Inlet to the north, and then we'll turn 360 degrees, to the west you'll see the City of Vancouver in the distance with the second narrow bridge in the foreground.

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260. As we look to the south you see again houses of the City of Burnaby in close proximity. And then looking to the east you'll note the steep hillside immediately behind the refinery or Capital Hill. And again, as we look to the refinery, you'll see Burrard Inlet to the north.
261. And this isn't part of my video.
262. Next the video is going to show the truck route that travels west along Highway 1 through the City of Burnaby. You can see the City of Vancouver in the distance.
263. The crude trucks, as they travel along this route, will exit onto Willingdon Avenue. And they'll travel through a very built-up area of Burnaby, Burnaby Town Centre, and into a densely populated residential. This area contains several schools, community centres, ice rinks and other recreational facilities. And as -- as we will move north towards the refinery again you see Burrard Inlet approaching.
264. So we'll now drop to a street view and you'll see on the left a residential area. And as we approach on the right a large recreation and community centre which is the Eileen Dailly Youth Centre used by many of the residents in Burnaby, we'll come to a cross walk and then we continue north along Willingdon Avenue.
265. Again, you see houses on the left, there's a large soccer field on the right, and there's significant amount of foot traffic back and forth between the recreation complex, the soccer fields and other facilities, and of course the houses on the left.
266. So this -- this is the route that's taken both by the crude trucks that come in as a result of our relative truck refinery option, and near the end of Willingdon Avenue we'll be approaching the Burnaby refinery.
267. So on the right -- and we didn't pay to have this truck in the video but it just happened to be in Google's map. But on the right you'll see the sign for the refinery and the refinery gate immediately ahead. Once the crude trucks enter the refinery, they proceed to the truck offload site. That site is highlighted in yellow, and then the trucks reverse out the route we just travelled, back out to the highway.

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268. And that concludes our video.
269. So the challenge to supplying the refinery by any means other than pipe is amply demonstrated in the video. The proximity of the surrounding community, steep terrains and the nature of foreshore all evidence that challenge. Placing the Burnaby refinery at a spot that is dependent upon supply by pipe was a conscious decision. Other refineries made different choices over time based on their particular circumstances.
270. Chevron's choice was determined by its perception that reliance on marine delivery into a refinery located in the lower mainland was undesirable from a host of perspectives. While this choice has prohibited the Burnaby refinery access to economic crudes at time, TMPL has, until this recent period of apportionment, provided a safe, reliable source of supply with minimal disruption to the local community.
271. In making its commitment to supply from that pipeline, Chevron believed that it was taking a price risk but not a supply risk. That is, Chevron did not knowingly accept the risk that the regulated pipeline upon which it had committed to rely would be permitted to render itself unable to provide Chevron with the supply that the Burnaby refinery requires.
272. The current unreliability of supply from the pipeline means that Chevron now finds itself unable to make a long-term commitment to the pipe because it's uncertain whether it can expect to receive adequate supply to keep the refinery running over the next seven years. Chevron is hopeful that the Board can remove that uncertainty by granting this application.
273. Thank you again for the opportunity to summarize Chevron's perspective.
274. **MR. SANDERSON:** Thank you, Mr. Judd.
275. Mr. Chair, that completes the direct examination of this panel and it's available for cross-examination.
276. **THE CHAIRMAN:** Ms. Buchinski?

--- (A short pause/Courte pause)

**--- EXAMINATION BY/INTERROGATOIRE PAR MS. BUCHINSKI:**

277.           **MS. BUCHINSKI:** Thank you, Chris.

278.           Good morning, panel. My name is Marie Buchinski and I have a few questions for you this morning on behalf of Trans Mountain Pipeline ULC.

279.           I wanted to start this morning, if I could, with a question regarding the opening statement that Chevron has just read. Near the end of your opening statement in the second-last paragraph which begins, “The current unreliability”, Chevron refers there to a seven-year period of uncertainty during which it is uncertain whether Chevron can expect to receive adequate supply to keep the refinery running.

280.           With respect to the reference to the seven-year period, is the seven-year period intended to reflect the evidence of Wood Mackenzie and its views on the length of time the Canadian crude discount would persist?

281.           **MR. JUDD:** No, we believe that to be the period of time before an expansion occurs on the Trans Mountain pipeline system.

282.           **MS. BUCHINSKI:** And would that be the time period that you’re proposing for the priority destination designation to persist if it’s granted?

283.           **MR. JUDD:** No, we believe that because of the geographical restrictions and the specific nuances at the Burnaby refinery that priority destinations should be granted for as long as the refinery is not capable of finding economic supply from alternate sources.

284.           We don’t think that the -- believe that that time period should be limited to just the period of the start of expansion, rather it should be made clear that the designation will continue as long as the circumstances requiring it -- meaning that we can’t get economic alternative supply -- remain.

285.           **MR. FOUNTAIN:** I’d like to add one statement to that and that is that once the expansion occurs -- assuming it does occur on Trans Mountain -- at that point, if in fact it removes apportionment from the system, then priority destination is something of a moot issue; it’s not practically applied because everybody has access to space.

286. But if we enter a period of time post-expansion where the system is -- continues to be on apportionment, then the -- if the same circumstances of dependency upon Trans Mountain exist in the future that exist today, then we would think that priority destination should continue.

287. **MS. BUCHINSKI:** Could I have you turn up your response to NEB IR 1(a) which is Exhibit B-07c? And here the Board had asked Chevron to identify the commodity types and the volumes for which Chevron is seeking a priority destination designation.

288. And in its response Chevron states:

*“The Priority Destination designation should apply to the processing capacity associated with the [priority destination, i.e. the Burnaby Refinery.]”*

289. Chevron also goes on to state that:

*“This would limit the Priority Destination to a volume equivalent to the anticipated processing capacity of the Burnaby Refinery at the time of each monthly nomination.”*

290. Why is Chevron proposing that its requested PDD be limited to a volume equivalent to the anticipated processing capacity? I take it that that would be the upper limit of a PDD; is that correct?

291. **MR. FOUNTAIN:** Since the priority destination provision speaks to a location, we believe that that location -- in this case being Burnaby -- that the volume being processed through Burnaby -- in this case the crude processing capacity through Burnaby -- should be the limitation for the volume that could be nominated under the priority destination designation.

292. So to put a practical spin on that, one of the prohibitions we believe should be put in place for this would be the exportation of crude. We shouldn't be able to come in, use the volumes across the -- through the facility for the processing capacity of the site and then be able to also load a ship over the dock with crude as well. That should be prohibited because that's not part of the location.

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293. But we do believe that the locational capacity of the site, which in this case is 57,000 barrels a day today for crude capacity, should be the volume that's associated with the priority destination designation.
294. **MS. BUCHINSKI:** So then you would see a PDD, if it were granted, being maxed out at 57,000 barrels per day?
295. **MR. FOUNTAIN:** Yes, with one caveat -- and I think this is a minor issue in this case and we'll get to it later -- but the reason we wrote it the way we did was because let's say that there was a minor expansion of the refinery at some point in the future, you still have the same exact characteristics of the site being needed -- needed to be supplied by the pipeline, the refining capacity could change.
296. Now that said, the video I think shows -- and we'll speak to this -- there's very, very, limited ability for anything like that to occur. The site is maxed out at this point. So I don't foresee an expansion. There's nothing in the works, but we wrote it that way because we felt like that, theoretically, it should apply to the capacity of the site.
297. Let's say there was another priority destination applicant, it should apply to the capacity of the site, not to the volume that's become static in time.
298. In this case, I think that that volume probably does remain.
299. **MS. BUCHINSKI:** So then your proposal, if I understand it, would be that, each month, when Chevron makes its nomination for transportation service on Trans Mountain Pipeline, the amount that Chevron could nominate would be limited to the anticipated processing capacity -- whether it's the 57 that you've referred to or some other capacity -- it would be limited to the anticipated processing capacity of the Burnaby refinery at the time that the nomination is made to Trans Mountain.
300. Correct?
301. **MR. FOUNTAIN:** That is correct.
302. **MS. BUCHINSKI:** Okay.
303. Now, with respect to the 50 -- sorry. With respect to the 57,000

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barrels per day that you've just made reference to, you're not suggesting that the PDD be limited to that amount. You're going to leave it open?

304. That's your proposal?

305. **MR. FOUNTAIN:** Our belief in that -- our reason for leaving it open was: Let's say that we have a period of time where there's maintenance going on at the refinery or a shut down or something that's -- in the normal course of business, requires reduced crude throughput, we felt like, during those periods of time, we shouldn't be nominating 57,000 if we can't process the 57,000 for that period of time.

306. We should be limited to the amount that the refinery could process at any given point in time.

307. So we -- practically speaking, we see kind of a maximum of the 57,000 with the potential for the nominations to actually be lower than that based on the needs of the refinery at any given nomination cycle.

308. **MS. BUCHINSKI:** In response to an IR that was posed to Chevron by P66 Shell -- and its Chevron's response to P66 Shell IR 1a and b and it's Exhibit B-07i -- Chevron had indicated that the 57,000 barrels per day, which you just made reference to, is indicated to be the total refining capacity but that, on average, the refining capacity is closer to 55,000 barrels we day.

309. Correct?

310. **MR. FOUNTAIN:** That's correct.

311. **MS. BUCHINSKI:** Yet Chevron believes that 57,000 would be a more appropriate number, being the maximum anticipated processing capacity?

312. **MR. FOUNTAIN:** So the crude capacity for the site we consider to be 57,000 barrels per day; that is, we have two crude units and, when you add the nameplate capacity of those two crude units together, it becomes 57,000 barrels per day.

313. When the refinery is running well without any significant issues, it achieves a nominal throughput capacity of 55,000 barrels per day.

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314.           **MS. BUCHINSKI:** With respect to any upper limit in terms of the anticipated processing capacity, has Chevron taken into account volumes that the refinery either is or will be able to acquire by rail, i.e. 8,000 barrels per day?
315.           **MR. FOUNTAIN:** Regarding the rail volumes, we do not believe those volumes should be factored into the equation and, if I might, let me give a couple of thoughts as to why.
316.           We believe the Trans Mountain tariff intends to make provision for allocating -- for the allocation of existing capacity in a manner that's most economic and least wasteful and the Priority Destination clause was intended to ensure that shippers with alternatives would use them so that both those with and without alternatives could utilize their respective capacities.
317.           Others' alternatives -- this gets to the issue of why we don't believe rail volumes at Burnaby should be considered in this equation -- others' alternatives were constructed with the clear intent for economic return associated with those alternatives by accessing a crude or a supply chain that they viewed as being economically superior to Trans Mountain Pipeline.
318.           And if you look at the period of time since the Priority Destination provision has been in place since 1985 -- 28 year period -- 24 years out of that 28 year period, the system has not been apportioned and, during that period of time, that's evidence that those other refiners were utilizing their alternative means of accessing crudes through their alternative sources, otherwise, the system would have been apportioned.
319.           So they were economically benefited by chasing a different crude or a different supply chain through their alternative supply routes.
320.           Let's contrast that to where Burnaby is. Burnaby did not have any rail capacity until this recent period of apportionment. The rail was built only for the purpose of supplementing the exact same crudes from the same Western Canadian Basin to bring those crudes into Burnaby at a far higher -- three to five times more expensive -- cost than the pipe itself.
321.           So clearly uneconomic relative to the pipe, whereas the other competitors built their alternatives with the clear expectation that they were superior economically to the pipe.

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322. **MS. BUCHINSKI:** So the answer to my question is: No, you did not take into consideration the amount of volumes that you might be able to acquire by rail.

323. Correct?

324. **MR. FOUNTAIN:** We do not think those should be considered.

325. **MS. BUCHINSKI:** Thank you.

326. Can I assume that -- well, I'll let you answer. Would it be the same answer with respect to the volumes that the Chevron refinery is or will be able to acquire by truck, i.e. 6,000 barrels per day?

--- (A short pause/Courte pause)

327. **MR. FOUNTAIN:** We take the same position on the truck as the rail.

328. **MS. BUCHINSKI:** Thank you.

329. I'd like you to turn up a response that Chevron gave to BP Canada and it's BP Canada's Information Request 1b, which is Exhibit B-07g.

330. And, there, BP Canada had posed to Chevron the following question:

*“Explain how Chevron expects the Priority Destination order to deal with variations that may occur with respect to Chevron’s supply requirements including periods where the refinery may be partially or wholly inoperative?”*

331. Chevron's response to that question was to refer back to Chevron's response to NEB 1.1a and, again, that's where Chevron indicated that it would apply or request to have the PDD applied to the anticipated processing capacity of the refinery.

332. If we take the 50 -- 57,000 barrel per day number that was provided in earlier testimony, if we assumed that Chevron was able to obtain a PDD for 57,000 barrels per day -- being the anticipated processing capacity in any given month -- and, in that given month, Chevron nominated 57,000 barrels per day but then determined that it could not process the 57,000 barrels per day that it had

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nominated, what does Chevron propose would happen to the volumes nominated by Chevron under PDD but that Chevron could not process at the refinery?

--- (A short pause/Courte pause)

333.           **MR. GRAY:** Sorry, could you repeat the question for me?

334.           **MS. BUCHINSKI:** Sure.

335.           Assuming that there was a Priority Destination designation granted that applied to 57,000 barrels per day of anticipated processing capacity in a given month and, in that given month, Chevron nominated the full anticipated processing capacity but then determined that it could not process the 57,000 barrels per day, what does Chevron propose would happen to the volumes that were nominated under the PDD but that Chevron could not process at the refinery?

336.           **MR. GRAY:** So I think that depends on the circumstances. I could see a number of them.

337.           In normal -- there's normal variations in running a refinery versus a nomination and many -- most -- the majority of the cases, the differences can be dealt with with the inventory in the system and the tankage to make up the -- to cover the difference between what was nominated and what would have been run.

338.           If there was a reason the refinery had to shut down -- unplanned maintenance -- then we would rely upon the tariff as it is written today, and look -- if there -- if it fell under the force majeure clause then we would look to utilize the force majeure. And then I think there's probably some ground that would need to be covered using some working practices with -- that Kinder Morgan would need to develop to be able to manage any surplus.

339.           If we have committed to only using the crude at the site and not resell it, or to a third party, that certainly limits our ability to respond, and so there may be some working practices that would need to be developed.

340.           **MS. BUCHINSKI:** Does Chevron propose that it would have an ability to remarket those particular volumes or sell those volumes to another party?

341. **MR. GRAY:** No, we do not.
342. **MS. BUCHINSKI:** Given that you would not intend to resell, would Chevron then have any opposition to a provision in a tariff that would limit or restrict the ability for Chevron to redirect the volumes from the Chevron refinery?
343. **MR. FOUNTAIN:** I apologize; could you repeat the question one last time?
344. **MS. BUCHINSKI:** I'll try.
345. **MR. FOUNTAIN:** I'm sorry.
346. **MS. BUCHINSKI:** That's okay. So the testimony of Chevron was that it would not intend to remarket or sell volumes to another party if it nominated a certain amount but was only able to process at the refinery in a given amount a lesser volume.
347. **MR. FOUNTAIN:** M'hm.
348. **MS. BUCHINSKI:** And so the question was, based on that testimony then, I take it that Chevron wouldn't have an objection if there was a tariff provision that restricted the ability for volumes nominated under a PDD that restricted the ability to redirect those volumes?
349. **MR. FOUNTAIN:** From a policy perspective, I'm aligned with that statement and in agreement with it.
350. The only caveat or struggle I'm dealing with is let's say that there are barrels that are destined for Burnaby in this case or a priority destination location, that -- and then there's an unexpected issue at that facility that causes it not to be able to process the volumes that are in the pipe coming its direction, then the question in my mind is practically what do you do. If you can't export because you're prohibited exporting and you can't redirect but you don't have -- you have a containment issue, I don't think it's right to shut down the pipeline just because there's no containment.
351. So I think there practically needs to be a way -- economically I'm supportive of where you are and I don't think Chevron should benefit economically from that type of a situation, and I'm okay with a provision that

deals with that issue.

352. But practically also I don't want to -- I don't want a priority destination location because it has no ability to export the crude and no ability to contain it and it's coming its way to have a situation where the entire shipper community on Trans Mountain and Trans Mountain itself are affected from that perspective.

353. So I think some provision needs to be put in place that would allow that for that type of a scenario.

354. **MS. BUCHINSKI:** And what about the possibility, from a practical perspective, of Chevron turning back those volumes to Trans Mountain, the volumes that it's not able to process?

355. **MR. FOUNTAIN:** So is your question the Chevron -- would Chevron be opposed to that option; is that what your question is?

356. **MS. BUCHINSKI:** Yeah, would Chevron see that as one option where there'd be a provision that if Chevron was not able to use the volumes that the capacity would be turned back to Trans Mountain?

357. **MR. FOUNTAIN:** As long as the value of the commodity was being addressed. So if there was a provision to where we were being recompensed for the value of the crude that was purchased by Chevron to be put into the system and that was being recompensed I think that's fine, we don't need -- we're not looking to profit from that in that scenario, but by the same token I don't see a giveaway of a valuable commodity that exists in the system either.

358. **MS. BUCHINSKI:** Okay. Well, let's just follow that up a little bit. If there were certain volumes that Chevron couldn't process and those volumes got turned back to Trans Mountain, you're saying that you don't want to be economically harmed by that; correct?

359. **MR. FOUNTAIN:** I think we're on two different points. My point was -- and maybe it's the interpretation of what giving it back to Trans Mountain means.

360. Trans Mountain does not own the crude that exists in the pipe, and so if you're saying are we giving the crude to Trans Mountain no, I would be okay

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- with selling the crude to Trans Mountain at -- even at cost, that's fine, I can understand not needing to profit from that situation, but I don't -- I don't see giving the commodity. It's a very valuable resource and I don't know why Trans Mountain should all of the sudden be given a gift of very substantive value because of that situation.
361.           **MS. BUCHINSKI:** And sorry I think we're just -- we are on two different -- I'm talking about the capacity of the pipeline and I think you were talking about the volumes of crude that were actually being transported on pipe.
362.           **MR. FOUNTAIN:** I'm speaking to the commodity, yes.
363.           **MS. BUCHINSKI:** Okay. And I'd like to go back to ---
364.           **MR. FOUNTAIN:** Yes, if you're asking about capacity ---
365.           **MS. BUCHINSKI:** Yes, sorry.
366.           **MR. FOUNTAIN:** --- then yes, to the extent possible. In fact -- and I would suggest that it should be as early as possible. As soon as we understand that we have a containment issue because of some sort of a processing issue going on at the refinery that's going to cause us to not be able to take the crude that's been nominated, then I think we have an obligation to notify Trans Mountain as quickly as possible and to the extent possible allow that capacity to be redistributed to the other shippers as appropriate.
367.           **MS. BUCHINSKI:** Right. And in a scenario where Trans Mountain was unable to reallocate that capacity to other shippers what would Chevron propose to happen in that circumstance?
368.           **MR. FOUNTAIN:** You bring up a detail that we haven't fully considered. I could understand having some sort of a penalty or a take-or-pay. Those details need to be worked out. But I could see some sort of a scenario where if Trans Mountain is being harmed because its capacity is not being fully utilized that there's some sort of recompense consideration made for that.
369.           **MR. JUDD:** So the only addition I would make to that is I think it depends on any given time as to the status that the pipeline finds itself in. You know, is the pipeline apportioned or is the pipeline not apportioned, I think those two scenarios may speak to a different solution.

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370. **MS. BUCHINSKI:** But again, you wouldn't be opposed to some type of a take-or-pay option in appropriate circumstances?
371. **MR. JUDD:** So I think that would be one of the options that we'd be definitely willing to consider or speak to.
372. **MS. BUCHINSKI:** And once a nomination is made under the priority destination for any particular month, is Chevron proposing at all that it would have an ability to reallocate those volumes to an isooctane nomination, for example, or otherwise switch the nomination to a different commodity group?
373. **MR. GRAY:** No, we would just propose to use it for crude, no reallocation.
374. **MS. BUCHINSKI:** So am I correct then, based on that answer that Chevron is applying to have a priority destination designation apply only to crude volumes that are nominated?
375. **MR. GRAY:** I would call it the crude processing capacity, yes. Nominations for the crude processing capacity.
376. **MS. BUCHINSKI:** Does that include, sorry, crude oil volumes?
377. **MR. GRAY:** Crude oil volumes.
378. **MS. BUCHINSKI:** Does that include iso-octane volumes?
379. **MR. GRAY:** No, it does not.
380. **MS. BUCHINSKI:** Does that include trans-mixed volumes?
381. **MR. GRAY:** I guess maybe you could clarify your question in terms of trans-mix and -- and whose trans-mix are you referring.
382. Trans-mix is generated in the line that Chevron processes on behalf of others or the trans-mix that was generated by Chevron's shipments?
383. **MS. BUCHINSKI:** I guess the question I have is whether the barrels per day, the anticipated processing capacity of the Burnaby refinery, whether that

includes the processing capacity for trans-mix or not?

--- (A short pause/Courte pause)

384.           **MR. FOUNTAIN:** Forgive me for the side bar.

385.           Part of our issue was -- or challenge that we were trying to struggle with was we don't nominate the trans-mix to the system, to the Burnaby refinery, it's a service that we -- we provide to the shippers of Trans Mountain by accepting the trans-mix and running it through the facility.

386.           That said, we do run those volumes through the crude processing units at the refinery. So in -- in essence, it does deduct from the 57,000 barrels a day of crude processing capacity at the refinery.

387.           So I guess the answer to the question would be: If we continued to receive the trans-mix on the system for the -- for the shippers of the system then that would be reflected in the nominations that we would be putting into the system. You would see something slightly below 57,000 to reflect that trans-mix.

388.           If trans-mix was handled through another means, if all of a sudden you decided to run it through one of your tanks, put it on a barge and send it to another refinery for processing there then we would be back to the 57,000 barrels a day of crude.

389.           Does that address your question?

390.           **MS. BUCHINSKI:** Yeah, I think so.

391.           So using as an example the 57,000 barrels per day that we talked about earlier, if the Burnaby refinery continued to process trans-mix -- which is basically the interface of the product -- then the nominations that Chevron would make on a monthly basis to Trans Mountain would be reduced by a volume of -- of trans-mix.

392.           Is that correct?

393.           **MR. FOUNTAIN:** That is correct.

394.           **MS. BUCHINSKI:** Okay.

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395. In Chevron's response to an Information Request from ADOE -- and its IR number 2(c), which is Exhibit B-07e -- Chevron states that with respect to trans-mix:

*"There is no other facility in the Lower Mainland that can perform this service during period[s] of shutdown or low refinery runs."*

396. And in that response, when Chevron makes reference to "this service", I take it that that is the reference to the processing of trans-mix?

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

398. **MS. BUCHINSKI:** Is it the evidence of Chevron that there is no other party capable of processing trans-mix from the Trans Mountain pipeline?

399. **MR. GRAY:** Currently, Chevron processes the trans-mix that's generated on the pipeline.

400. We're in a position to efficiently do that and have been -- done it for a significant amount of time. I don't think that precludes other options that are out there to Kinder Morgan or the other shippers in finding alternate ways of managing trans-mix that gets generated.

401. On the other hand, I think Chevron offers the most efficient. Being in the location, it minimizes the transportation costs and can do it on a very rateable basis.

402. **MS. BUCHINSKI:** So then would I be correct that it is not your evidence that there is no other party capable of processing trans-mix?

403. **MR. FOUNTAIN:** If you're referring back to the -- the answer in ADOE, that was in the Lower Mainland.

404. There are clearly many places around the globe that can process trans-mix.

405. And so, if you want to put it in tank, load it on a barge or a ship and ship it to someplace, there are many, many refineries around the globe that can

process trans-mix.

406. **MR. JUDD:** I -- I think it's -- I think it's important to note in context that -- that those other options also increase -- there's an increased risk of handling the material. You're going to be adding a marine component that doesn't currently exist on -- on a pipeline.

407. And so I think our evidence goes to both the -- our locational capabilities, the ease in which we can do it and the security by which we can do it.

408. And I think it also presents a fairly low-risk option of managing the trans-mix.

409. **MS. BUCHINSKI:** Does Chevron know whether trans-mix can be moved over the Westridge dock?

410. **MR. GRAY:** We don't have any knowledge of that.

411. **MS. BUCHINSKI:** And are you aware of any restrictions on the ability of a shipper to nominate trans-mix over the Westridge dock?

412. **MR. GRAY:** Not aware of any, no.

413. **MS. BUCHINSKI:** Is Chevron aware of whether other refineries have existing infrastructure to manage trans-mix from the Trans Mountain facilities?

414. **MR. GRAY:** Not personal knowledge but, given the processing capacity that's nearby, I would expect that they would have that capability, yes.

415. **MS. BUCHINSKI:** So if a priority destination designation was granted, what rate under the Trans Mountain tariff is Chevron proposing would apply to those volumes?

--- (A short pause/Courte pause)

416. **MR. FOUNTAIN:** We're proposing that the priority destination toll should equal the spot rate.

417. And our rationale for that -- well, there's four different things that

we're thinking about that kind of lead us to that rationale.

418. Priority destination differs significantly from firm service volumes. Firm commitments typically capture toll discounts as is evidenced in the -- the expansion proposal that's out right now. Priority destination we don't believe should get the tariff discounts associated with firm -- firm commitment.
419. The priority destinations both provide value to Trans Mountain and receives value relative to spot shippers and what I mean by that is, as a captive customer, we're providing volume and value to Trans Mountain during non-apportionment periods.
420. So as I mentioned before, in 24 of the last 28 years, the system was not apportioned and, during those periods of times, the captivity that Burnaby represented to Trans Mountain clearly benefitted Trans Mountain by providing a very stable rate of -- of revenue -- revenue flow into the system during that period of time.
421. And -- and I would suggest that also -- that Burnaby, during that period of time, provided significant value to the other shippers of Trans Mountain by keeping the tariff rate lower because the volumes on the system were higher. And so, as those costs were distributed over a base of volume that was -- that was higher than it could have been otherwise because of captivity of Burnaby that actually benefitted the other shippers on the system during those non-apportionment periods.
422. **MR. GRAY:** There's one additional point I'd like to make is that the current tariff doesn't differentiate between PDD and a spot shipper and provide any direction in terms of the applicable tariff.
423. The tariff is defined in the -- the toll is defined in the tariff and would appear to apply to both the spot and the PDD volume.
424. **MS. BUCHINSKI:** Would Chevron agree that firm service on pipelines that are regulated by this Board is generally a take-or-pay type of a commitment?
425. **MR. FOUNTAIN:** In a general sense I would agree with that, maybe not in every case but generally.

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426.           **MS. BUCHINSKI:** Thanks. And would you agree, sir, that where the Board designates a destination as a priority destination, that the shipper to the destination gets the equivalent of firm capacity for the capacity that it subject to the PDD?
427.           **MR. FOUNTAIN:** We disagree. We think PD-- priority destination -- is unique from firm service. And let me give a couple of the unique aspects of it. The National Energy Board confirmed that priority destination designations for shippers without an economic alternative method of supply they -- that is not a requirement for a firm shipper but it is a requirement for a priority destination shipper.
428.           The National Energy Board also ruled that priority destination capacity is subservient to priority access received by firm service shippers, so therefore there's another delta. That was in Order T00012012.
429.           The priority destination also requires Board designation by reason that it's not capable of being supplied economically from alternative sources. That's clearly not a requirement of a firm shipper, so another delta.
430.           And then fourthly, firm commitments typically receive tariff discounts. Clearly in Trans Mountain's current case the expansion proposal allows for a 20 percent discount for a firm service shipper. We're not suggesting that that would be something that would be afforded to a priority destination shipper, so therefore another delta.
431.           And then lastly, you know, priority destination volumes we don't believe require the same level of equipment. It doesn't require a 15 or 20-year commitment. There's nothing in the destination -- priority destination designation provision that speaks to that type of a commitment. And clearly since it doesn't provide the same rights, priorities, tariff, benefits as firm service we don't think that the commitment level required for a firm service shipper should be required of a priority destination shipper.
432.           **MS. BUCHINSKI:** Sir, can you tell me what the differences are, in your view, between the level of rights and benefits as between firm service and that of a priority destination designation?
433.           **MR. JUDD:** So I think Mr. Fountain just explained those differences.

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434.           **MS. BUCHINSKI:** So those five are the five differences that Chevron is relying on?
435.           **MR. JUDD:** We see those as the key five differences between a firm shipper and a priority destination shipper, and we think that they're substantial enough that they do differentiate those two types of service.
436.           **MS. BUCHINSKI:** And is it those five reasons as well that Chevron is relying on when it suggests that the PDD should not be subject to a ship or pay obligation?
437.           **MR. FOUNTAIN:** Could you refer me to where we suggested that?
438.           **MS. BUCHINSKI:** NEB IR 7(c), Exhibit B-07c, page 13 of 16.
439.           **MR. FOUNTAIN:** Thank you.
440.           **MS. BUCHINSKI:** It's the second-last paragraph on that page.
441.           **MR. FOUNTAIN:** Yes.
442.           **MS. BUCHINSKI:** Sorry; yes you're with me or yes, those are the reasons?
443.           **MR. FOUNTAIN:** Yes, we're with you, and yes, those are the reasons.
444.           **MS. BUCHINSKI:** Okay, thank you.
445.           In its response to NEB IR 1(b), as in Bob, which is Exhibit B-07c, Chevron states that any priority destination designation should only continue, quote:
- "...as long as the circumstances requiring it continue to prevail."*
446.           Do you see that?
447.           And in that sentence when Chevron refers to "circumstances requiring" priority destination designation, is Chevron referring to circumstances

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under which the Burnaby refinery is not capable of being supplied economically from alternative sources?

448. **MR. JUDD:** Yes.

449. **MS. BUCHINSKI:** And is it then Chevron's view that PDD should remain in place until the Burnaby refinery is capable of being supplied economically from alternative sources?

450. **MR. JUDD:** I think, as our evidence has indicated, we've developed a business model at the Burnaby refinery that really has -- we've committed ourselves to Trans Mountain pipeline. We've assumed a price risk on the crude that we purchase by doing that but what we value as the supply security of that.

451. And so it would be -- we don't see that business model changing, we see that same interest in supply and being committed to the pipe staying over time if we changed our infrastructure. If we developed, you know, an alternate means of supply that was economic to the pie, then I think that should be considered at that time by the Board and PDD ought to be reviewed.

452. **MS. BUCHINSKI:** So then if there were a change in circumstances you would support the ability for the Board or an interested party to bring a PDD back before the Board for reconsideration or review?

453. **MR. JUDD:** Yes.

454. **MS. BUCHINSKI:** And you've given us one example of a circumstance that could lead to a review, i.e. Chevron develops a form of supply that provides a source of crude to its refinery; correct?

455. **MR. JUDD:** I think, more specifically, if we developed a means for alternate supply that was economic over the supply that we were receiving by the pie if we could find a way that we were not geographically limited, which we believe that we are, then that should be -- that should be considered.

456. **MS. BUCHINSKI:** So if the Trans Mountain pipeline was expanded and there was no apportionment on the pipeline would that, in your view, be a circumstance for a review of a PDD designation?

457. **MR. FOUNTAIN:** Yeah, I think we would, in some respects, defer to

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- the Board's discretion on that particular issue. We don't believe that that constitutes a change in circumstances for the location in Burnaby's case, and all of the definitional aspects of priority destination would still be in place for Burnaby post-expansion. So from a definitional perspective, we don't see the change, we don't see a reason for change because of expansion.
458.           What's interesting is if -- let's say that we aren't -- there's no apportionment, that expansion alleviates apportionment, then at that point priority destination is really a moot issue to the shipping community, everyone's getting whatever volumes they're nominating through the system, it has no practical application at that point.
459.           If, however, the system is still apportioned, and Burnaby, in this case, still has the same dependency upon Trans Mountain that it had prior to expansion, then priority destination would be clearly valued and needed and necessary during that period of time.
460.           **MR. JUDD:** I think I would add to that that I struggle with the concept that priority destination is also instantaneous in determining whether it applies or not. I think if the geographical limitations are in place, if the means for alternate economic supply don't exist, if the pipeline were not apportioned then we would -- all shippers would benefit from that period of time.
461.           But if circumstances developed, as they have in this case, where apportionment happened, it wasn't seen, and then Chevron were required to once again go through a similar, you know, lengthy deliberative process and suffer an economic loss for the period of time while they re-justified that priority destination.
462.           That doesn't seem like an efficient means if our circumstances haven't changed, if our geography hasn't changed, if our ability to receive other economic sources haven't changed, you know, a back and forth, I don't think is an efficient use of the Board's time. It wouldn't be an efficient use of our company's time.
463.           **MS. BUCHINSKI:** So are you suggesting then that the priority destination designation wouldn't go away, it would just remain in place and whenever Chevron thinks it needs it it would look to that?
464.           **MR. JUDD:** So we believe priority destination applies to a location and if that location is not able to receive economic supply relative to the pipe that

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we would meet that standard. And if there were a period of time where apportionment went away, to immediately wipe away the priority destination status of a facility would appear to me be -- to be inefficient if nothing else has changed.

465.           **MR. FOUNTAIN:** If I might add, if I'm looking at this thing from Trans Mountain's perspective as well, I think that having a priority destination shipper during non-apportionment period is of great benefit to Trans Mountain because it's the definition of a dependent shipper that's volumes are going to be rateable on that system during that period of time.

466.           Clearly if we were to go and create an alternative means of supply to the refinery, as Mr. Judd indicated that was economic and competitive to Trans Mountain, then yes, I believe that the priority destination designation should be removed at that time but that would be to the detriment of Trans Mountain as well.

467.           **MS. BUCHINSKI:** In terms of the circumstances that could justify the termination or review of a priority destination designation, if there was an opportunity for Chevron to acquire pipeline capacity through a contract, would Chevron view that as a circumstance that could justify termination of or review of a PDD?

--- (A short pause/Courte pause)

468.           **MR. FOUNTAIN:** Could you repeat the question one more time please?

469.           **MS. BUCHINSKI:** Sure. With respect to circumstances that could justify termination or review of a priority destination designation, if there was an opportunity for Chevron to acquire pipeline capacity through a contract, would Chevron view that as a circumstance that could justify termination or review of a PDD?

470.           **MR. JUDD:** So I think all the conditions associated with those circumstances would have to be considered. I think you'd have to look at has anything changed with the geography; is that alternate service agreement an economic alternative to the service that the location is currently receiving. So it's hard to speak to the hypothetical, not having a bevy of details to address it.

471.           **MS. BUCHINSKI:** If Chevron completed the construction of rail

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facilities, would Chevron view that as a circumstance that could justify termination or review of a priority destination?

472. **MR. JUDD:** So I think if you're speaking about the Chevron Burnaby refinery specifically and the rail facilities that we've constructed, those were constructed not at an economic alternative to supply that we receive on the Trans Mountain pipeline, those were constructed to mitigate supply shortfalls that threaten the operation of the refinery.

473. But if economic alternatives -- if there are alternatives created that are economic to shipment on the pipe for that means of supply, then I think that would have to be considered -- you know, be a consideration.

474. **MS. BUCHINSKI:** Would you have a similar response to the construction of a dock for the import of crude?

475. **MR. JUDD:** So again, if that dock were constructed as an economic alternative to the pipe, I think it would warrant a consideration if that dock were constructed as a means to secure supply and it were economically -- economically less to the pipeline, I think you'd have to consider those two alternatives to apply it to the standard.

476. **MS. BUCHINSKI:** And if the discount on Canadian crude was to go away or become smaller would Chevron view that as a circumstance that could justify termination or review of a PDD?

477. **MR. JUDD:** So I -- we believe priority destination is not about price or margin, it's an issue of supply. I think as we've highlighted, the -- we know that being committed to the Trans Mountain pipeline presents a price risk for us. Sometimes it may be a beneficial price result. Sometimes it might be detrimental to where other crude markets go but for us the key issue is the security of supply on the pipeline.

478. **MR. FOUNTAIN:** I think it's also worth adding that if you -- we've applied for priority destination three times and we withdrew our application the first two times. Those first two applications occurred during very thin margin periods. It's wasn't a margin driven decision, it was a security of supply driven decision and in this case, it's a security of supply driven decision as well.

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479.               So if the margin went away -- to your question, the discount went away and the margin therefore eroded, we would still need supply by Trans Mountain.

480.               **MS. BUCHINSKI:** Thank you, panel, those are all my questions.

481.               Thank you.

482.               **THE CHAIRMAN:** Thank you.

483.               Yes, I think we're probably at a time we could take a break to allow for the next to come up. So we'll break until 10 to 11.

--- Upon recessing at 10:19 a.m./L'audience est suspendue à 10h19

--- Upon resuming at 10:49 a.m./L'audience est reprise à 10h49

484.               **THE CHAIRMAN:** Mr. Langen, it's all yours.

**KORY JUDD: Resumed**

**ERIC FOUNTAIN: Resumed**

**PAUL GRAY: Resumed**

**HAROLD YORK: Resumed**

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

485.               **MR. LANGEN:** Thank you, Mr. Chairman.

486.               Gentleman, you probably already know my name is Langen; I'm counsel for BP.

487.               Just off the top, as I understand it, Mr. Fountain, you are employed by Chevron Products Company; is that correct?

488.               **MR. FOUNTAIN:** That is correct.

489.               **MR. LANGEN:** Okay. And Mr. Judd, I believe you're also employed by Chevron Products Company?

490.               **MR. JUDD:** Correct.

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491.           **MR. LANGEN:** Okay. And Mr. Gray, can you tell me who you're employed by? Chevron Canada?

492.           **MR. GRAY:** Chevron Canada Limited, yes.

493.           **MR. LANGEN:** Okay. And Mr. Fountain or Mr. Judd, can you tell me, Chevron Products Company, is that a U.S. based entity?

494.           **MR. JUDD:** Yes, it's a U.S. based entity.

495.           **MR. LANGEN:** Okay. And can both of you confirm that you're authorized to provide evidence on behalf of the Applicant in this case, which is Chevron Canada Limited?

**MR. FOUNTAIN:** Are you asking that of both of us? Yes, I can.

496.           **MR. LANGEN:** Okay.

497.           **MR. JUDD:** Yes for me also.

498.           **MR. LANGEN:** Thank you.

499.           And is Chevron Products Company based in California?

500.           **MR. JUDD:** I believe it is.

501.           **MR. LANGEN:** So Mr. Fountain, in your response to a question by Ms. Buchinski here this morning, you made reference to the fact that other shippers on Trans Mountain over the years have benefited economically by chasing other crudes whereas Chevron hasn't effectively had that opportunity.

502.           Is that a fair summary of what you said?

503.           **MR. FOUNTAIN:** Yes.

504.           **MR. LANGEN:** Okay, and -- and I think you said that in the context of a PDD application.

505.           I just want to understand, is it Chevron's view that refinery economics should be considered by the Board in considering Chevron's Application?

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506.           **MR. FOUNTAIN:** We do not believe refinery economics are applicable to the PDD review.
507.           **MR. LANGEN:** Okay, so can you help me understand how -- whether or not other shippers on the Trans Mountain pipeline over the years have benefited economically by shipping other crudes, presumably to process in their refineries, how that's relevant to Chevron in this Application?
- (A short pause/Courte pause)
508.           **MR. FOUNTAIN:** So the question was: Are -- maybe you should repeat the question if you don't mind just to make sure I've got it right.
509.           **MR. LANGEN:** It's -- and you've just confirmed this, it's Chevron's view or position in this proceeding that refinery economics should not be considered by this Board.
510.           Correct?
511.           **MR. FOUNTAIN:** That is correct.
512.           **MR. LANGEN:** And earlier, you seemed to indicate that the fact that other shippers on the Trans Mountain Pipeline have historically processed other crudes other than crudes shipped on the Trans Mountain Pipeline to their economic benefit is something that should be of import to this Board and what I'm trying to understand is that -- the difference.
513.           You're saying: Don't consider refinery economics, oh but, by the way, these folks over here, they made a lot of money.
514.           **MR. FOUNTAIN:** Well, if I might refer back to the conversation that I had with Ms. Buchinski, I was speaking to mode of transport, and what I was speaking to was that if you look back since 1985, in 24 of the 28 years, over that period of time to today, the system was not located, the Trans Mountain Pipeline System was not allocated.
515.           And so, the shippers of the system had the freedom to choose which mode of transport they thought was most advantageous to them.

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516. Burnaby did not have that choice because it's been dependent -- 100 percent dependent upon -- upon Trans Mountain for its supply. So over that period of time, all of its crude comes from Trans Mountain.
517. However, other shippers had docks where they could receive crude from others. They may have had rail. They may have had other means, whatever those specific characteristics to their refinery and to their operation are, but they had alternate modes of transport for their crude supply that Burnaby did not have, and during those periods of time, the fact that they chose to use those alternate modes of transport showed that it must have been economic in their interests to do so because Trans Mountain had available capacity.
518. They could have moved more barrels on Trans Mountain. They chose not to. I can only assume that that was economically motivated. That -- that is an assumption though.
519. **MR. LANGEN:** Okay ---
520. **MR. FOUNTAIN:** And so, but it's the mode of transport that they chose clearly leant itself to advantage economics.
521. **MR. LANGEN:** So to be clear though, are you suggesting that this Board should be considering historically whether or not shippers on the Trans Mountain Pipeline other than Chevron have made money as a result of choosing alternate modes of transportation or alternate crude sources?
522. Yes or no.
523. **MR. FOUNTAIN:** Not all all. I was only doing it in the context.
524. Ms. Buchinski had asked about or what I was referring to in the answer to Ms. Buchinski was the fact that Burnaby has actually created some benefit for other shippers on Trans Mountain over that 24 year period because when its volumes were higher and Trans Mountain would calculate its tariff for the oncoming year, that higher volume that was brought about on the pipe because of Burnabys' dependency benefited all those other shippers.
525. **MR. LANGEN:** And to be clear, Mr. Fountain, you're aware of the dock premiums that are being paid by dock shippers currently?

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526. **MR. FOUNTAIN:** Are you -- are you referring to the -- the Firm 50?

527. **MR. LANGEN:** No, I'm referring to the bids for spot capacity.

528. **MR. FOUNTAIN:** Mr. Gray has better familiarity with that. That's okay.

529. **MR. GRAY:** Yes.

530. **MR. LANGEN:** Okay.

531. And you're familiar with the fact that those revenues that are generated from those bids go against the revenue requirement and, ultimately, the tolls for spot shippers; correct?

532. Land shippers?

533. **MR. GRAY:** The common carriage available dock capacity premiums, yes, I'm aware of that.

534. **MR. LANGEN:** Okay.

535. And so, in that context, as a land shipper, Chevron benefits from those reduced tolls as a result of those dock shippers bidding.

536. Fair?

537. **MR. GRAY:** Those premiums go back in and generate a surcredit that becomes a benefit to all the shippers on the pipeline.

538. **MR. LANGEN:** Including Chevron.

539. **MR. GRAY:** Chevron as a shipper, yes.

540. **MR. LANGEN:** Mr. Judd, when you were having a conversation with Ms. Buchinski, she asked you about when a PDD should terminate and you indicated that one instance might be when Chevron develops an alternative supply that is economic to the supply that's provided by the pipeline.

541. That might be one instance when it's appropriate; is that right?

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542.           **MR. JUDD:** I think I said that that was a -- that a provision of PDD is that you have no economic alternative to the pipe and so, if you are able to develop an economic alternative to a pipe, that would be a case where a PDD should be reviewed.

543.           **MR. LANGEN:** Okay.

544.           And can you tell me what incentive Chevron would have to develop an alternative to PDD once it has PDD?

--- (A short pause/Courte pause)

545.           **MR. JUDD:** As referencing the Burnaby refinery, I see little opportunity and it goes more to the logistics and geographic constraints of the location as opposed to there being necessarily any economic drivers outside.

546.           We find ourselves geographically constrained to many of the options that may be afforded others and so it's hard for me to imagine alternatives to our current means of supply.

547.           **MR. LANGEN:** So working for Chevron Products Company, I just want to understand the corporate structure.

548.           Is Chevron Canada Limited, a sub of Chevron Products Company?

--- (A short pause/Courte pause)

549.           **MR. JUDD:** So -- so I believe they're -- that they're separate entities..

550.           As far as reporting relationships, I have responsibility in the America's Products West for the operation, the operation of the Burnaby refinery -- Burnaby distributive area.

551.           **MR. LANGEN:** Okay.

552.           It's my understand that in addition to the refinery capacity at Burnaby, Chevron has a total of 955,000 barrels per day of refining capacity in the United States.

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553. Is that approximately correct?

--- (A short pause/Courte pause)

554. **MR. LANGEN:** If it helps you, I obtained it from the Chevron webpage.

555. **MR. JUDD:** Yeah, if our webpage says it, I suspect that's fairly accurate.

556. **MR. LANGEN:** Okay. Thank you.

557. And I'm assuming then, just for -- if we do some quick math -- if we add the Burnaby refinery capacity to that 955,000, we would get an overall in North America, U.S. and Canada, over a million dollars' worth of -- or a million barrels per day of processing capacity; correct?

558. **MR. JUDD:** I'm just not sure if the Burnaby refinery capacity is included or excluded from the 950 on the webpage, but it's about a million.

559. **MR. LANGEN:** Okay. Fair.

560. And as I understand it, Chevron is the largest refiner on the North American West Coast, having a combined refinery capacity of 550,000 barrels per day.

561. Does that sound fair?

562. **MR. JUDD:** Sir, could you help us with what you're referencing?

563. **MR. LANGEN:** I can.

564. If you pull up our aid to cross number 6.

565. So, Mr. Chairman, I'm conscious of my friends' comments this morning, Mr. Sanderson. We did provide aids to cross to my friend on Sunday evening and I am cognisant of his comments.

566. **THE CHAIRMAN:** Thank you.

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567. **MR. JUDD:** So we have that aid.

568. **MR. LANGEN:** Okay.

569. And that document is titled -- if we go to the second page, Ms. Butler please -- that document is titled "Minutes of Chevron Burnaby Refinery Community Advisory Panel, Annual Neighbourhood Meeting, November 24, 2011."

570. Do you agree with that?

571. Do you agree with the title on -- it's the minutes from a Chevron Burnaby Refinery Community Advisory Panel?

572. **MR. JUDD:** Correct.

573. **MR. LANGEN:** Okay.

574. And have you had an opportunity to review this document?

575. **MR. JUDD:** It was a large submission so we just scanned through the materials that we had to our -- at our availability yesterday.

576. So I haven't reviewed it in detail.

577. **MR. LANGEN:** Okay. So we'll see where we go then.

578. So as I understand it, the Community Advisory Panel is a community group -- that it was established by Chevron -- where members of the community come in and they communicate and information is exchanged as between Chevron, Burnaby Refinery and the community.

579. Is that a -- generally, a fair ---

580. **MR. JUDD:** As I've not participated in any of those -- in any of the council settings but I understand it to be such a body.

581. **MR. LANGEN:** Okay.

582. And if I can get you to go to -- there was a presentation that was given

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at this meeting and it's got Chevron's logo on it.

583.           So, Ms. Butler, if you go to the -- and I apologize I don't have the Adobe number, but if you go to the third -- it will be Slide number 6 in that presentation. It should be attached to this.

584.           You don't -- you don't have a copy?

585.           Maybe for ease, gentlemen, do you have the slide -- Slide number 6?  
Okay.

586.           And -- sorry, I apologize, Mr. Chairman, do you have Slide number 6?

587.           **THE CHAIRMAN:** Yes, we do.

588.           **MR. LANGEN:** Okay. Thank you.

589.           Gentlemen, if you go to Slide number 6, the heading is "Chevron Corporation A Global Energy Company".

590.           And there are four bullet points on that slide. One says:

*"Operations in over 90 countries around the world..."* (As read)

591.           **MR. JUDD:** Excuse me. I think we're confused so ---

592.           **MR. FOUNTAIN:** That's labelled as Slide 5 in my deck, but maybe  
---

593.           **MR. LANGEN:** Oh, I apologize it is Slide 5. I apologize.

594.           **MR. FOUNTAIN:** Okay.

595.           **MR. LANGEN:** My error.

596.           **MR. FOUNTAIN:** Thank you.

597.           **MR. LANGEN:** Sorry. Sorry for the confusion.

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598. So if we go to -- it states:

*“Operations in over 90 countries around the world,  
approximately 58,000 employees worldwide, a global refining  
capacity of 2 million barrels per day, ...”* (As read)

599. And it says:

*“Largest refiner on North American West Coast, 550,000  
barrels per day.”* (As read)

600. Do you agree that’s what it says?

601. **MR. JUDD:** I agree that’s what it says.

602. **MR. LANGEN:** Okay.

603. And do you agree that there -- do you have any reason to disagree with the statement that it’s the largest refiner on North American West Coast?

604. **MR. FOUNTAIN:** The only cause of our hesitation -- I think at the time this was submitted, clearly, that was accurate and we believe that.

605. We know that, recently, Tesoro bought a new -- or bought a new refinery in California. I don’t know whether that put them above us or not. But at the time that this was written, I agree that we were the largest.

606. **MR. LANGEN:** Okay. Fair.

607. And as I understand it, those refineries would obviously include the Burnaby Refinery but it will also include the Richmond California Refinery.

608. Is that right?

609. **MR. JUDD:** That’s correct.

610. **MR. LANGEN:** And the capacity of that refinery is about 245,000 barrels per day?

611. Approximately?

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612.           **MR. JUDD:** The source of your information?

613.           **MR. LANGEN:** I believe -- was the web, so I can tell you it wasn't Chevron per se, but can you -- would you take, subject to check, it's about 245,000 barrels per day?

614.           **MR. JUDD:** I'm just -- I'm reluctant to speak to that facility in specific capacities.

615.           **MR. LANGEN:** Can we agree that it's north of 200,000?

616.           **MR. JUDD:** I would agree with that.

617.           **MR. LANGEN:** Okay.

618.           And the El Segundo California -- spelled S-E-D-U-N-D-O -- can we agree that it's north of 250,000 barrels per day?

619.           **MR. JUDD:** I would agree with that.

620.           **MR. LANGEN:** Okay.

621.           **MR. FOUNTAIN:** I guess for the record, it's El Segundo. It's G-U-N-D-O.

622.           **MR. LANGEN:** Oh, I apologize.

623.           **MR. FOUNTAIN:** No worry.

624.           **MR. JUDD:** It actually means "the second refiner".

625.           So it got its name from being the second Chevron refinery in California.

626.           **MR. LANGEN:** Mr. Chairman, if I can have an exhibit number for this, I probably will refer to this later, so...

627.           **THE CHAIRMAN:** Mr. Sanderson?

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628.           **MR. SANDERSON:** Well, Mr Chairman, with respect to that, I may as well rise now because I think it's a number of these aids that'll fall in the same category.
629.           I have no objection to the Chevron slides -- which the witnesses were taken to -- forming part of the record. I do have an objection to the balance of the document to which the witness was not taken forming any part of the record.
630.           I don't care how it's put in, particularly, but I want it clear on the record that it is -- the pages these witnesses have looked at and identified given the volume of material which -- I don't quite have them all here but this is some of what the material that my friend has provided to us. I don't want the record to be burdened with a lot of stuff that isn't put to the witnesses.
631.           Of the material that was just referred to, one slide -- Slide number 5 of a -- of a slide deck attached to five pages of minutes is what's actually in the package and I do object to all of that forming part of the record.
632.           **THE CHAIRMAN:** Mr. Langen?
633.           **MR. LANGEN:** Mr. Chairman, and I understand where my friend is coming from -- I don't have a problem with that.
634.           Generally, two comments. First -- and I -- as I indicated to my friend at the time that the aids came across, we provided them all of the attachments that were attached to any of the minutes that we provided as aids. We did that as fair -- for fairness and completeness so that they would have the entire document; so that, for example, my friend couldn't say: "Well, you didn't provide us with everything so we didn't have the context." So I don't disagree with my friend.
635.           And my other point would be, as is practised before this Board, it is not permissible for a party to refer to an aid to cross-examination -- a page in an aid to cross-examination in argument if, in fact, it hasn't been put to the witnesses. And I think my friend and I are on -- ad idem on that.
636.           And so I don't disagree with him but at the same another comment -- I will be referring to this document later -- I intend to, possibly -- and I will be referring to the minutes. And the minutes provide the context because the minutes indicate that there was a presentation given and by whom.

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637. So with my friend's leave, I'm not trying to pad the record in any way. I don't intend to refer to portions of it that I refer to -- or that I don't refer to in argument. I don't -- that's not my intent at all.

638. **THE CHAIRMAN:** Mr. Sanderson?

639. **MR. SANDERSON:** I don't think we're very far apart, Mr. Chair, but there's one thing in what Mr. Langen just said which I should rise to which is the reference to the minutes.

640. I heard Mr. Judd say that he wasn't familiar with that meeting; he was familiar with the committee. I don't know about the other panellists, Mr. Langen can explore that with them, but I want him to know we'll take the position that minutes of a meeting at which none of the witnesses were present and cannot comment on the accuracy of are not something that we're going to accept ought to be part of the record. So that may be anticipating where we're going next, I don't know.

641. With respect to the more general point, generally speaking, the limitation on counsel's reference Mr. Langen refers to would be sufficient for me. The only thing is there is an awful lot in that material. This is a public record broadly accessible and whether or not all of it is appropriate to put on that record, I just haven't had the time to figure out.

642. So I would prefer if Mr. Langen, at the end of the use of each examination aid, can identify the material that he's -- expressly, we'll have the context because he did courteously provide it to us, so the witnesses will have been treated fairly but the record need only be burdened with the pages that he actually takes them to.

643. I think that's a more practical solution. In the circumstances it should meet Mr. Langen's needs, I think, and prevents the concern I have that this public record get a bunch of material that nobody has actually had an opportunity to review very carefully.

--- (A short pause/Courte pause)

644. **THE CHAIRMAN:** Thank you.

645. The Board -- when it does come to the practice of using aids to cross --

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and I would agree with Mr. Sanderson, that we don't want the record to be burdened with documents that are not relevant and being used for -- in aiding for the cross.

646. So under the circumstances, since we haven't really delved into the minutes yet, Mr. Langen, the Board is prepared to admit the slides since they were referenced at this time.

647. And we'll address the minutes when we come to them to see if the Panel are to put any questioning to it, if they can answer any questions as put to you. So I'll ask Ms. Butler, if you could give me an exhibit number for the slide presentation.

648. **THE REGULATORY OFFICER:** That will be Exhibit C4-14.

--- **EXHIBIT NO./PIÈCE No. C4-14:**

*Chevron Burnaby Refinery Overview*

649. **MR. LANGEN:** Thank you, Mr. Chairman.

650. Sorry can I get that exhibit number again please? The exhibit number again please; I didn't hear it.

651. **THE REGULATORY OFFICER:** I'm sorry, C4-14.

652. **MR. LANGEN:** B ---

653. **THE REGULATORY OFFICER:** C4.

654. **MR. LANGEN:** C4.

655. **THE REGULATORY OFFICER:** Dash 14.

656. **MR. LANGEN:** Thank you.

657. Gentlemen, in its evidence, Chevron confirms that Chevron made PDD applications in each of 2003, 2005 prior to this one; is that correct?

658. **MR. JUDD:** That is correct.

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659.           **MR. LANGEN:** Did Chevron not also make an earlier priority destination application to the NEB in 1987?
660.           **MR. JUDD:** We're not aware of that application.
661.           **MR. LANGEN:** Gentleman, if I can get you to pull aid to cross number 21.
- (A short pause/Courte pause)
662.           **MR. LANGEN:** Do you have that document?
663.           **MR. JUDD:** Yes.
664.           **MR. LANGEN:** Okay. If we go to the -- past the cover page, would you agree that it appears to be -- I'll take a step back. Did you get a chance to review this document? I take it at a high level you did.
665.           **MR. JUDD:** Just -- we just basically scanned the documents but did not review this in detail.
666.           **MR. LANGEN:** Okay. Would you agree that on the second page it indicates that it is an information request response by Chevron to the Canadian Association of Petroleum Producers in the MH-2-2005 proceeding?
667.           **MR. JUDD:** So I believe as we look at the heading, it says "Information Request Number 1 by Chevron Canada Limited to CAPP".
668.           **MR. LANGEN:** Okay. And so ---
669.           **MR. JUDD:** By CAPP to Chevron. Excuse me.
670.           **MR. LANGEN:** By CAPP to Chevron and the response is Chevron replying; correct?
671.           **MR. JUDD:** Correct.
672.           **MR. LANGEN:** Okay. And if you look at -- on the first page, this is Question 38 as identified and (h) which is at the bottom of the page, Ms. Butler.

It says:

*“Please provide copies of all Chevron correspondence, submissions, evidence and arguments to the NEB in the [1980 - - sorry -- in the] 1984 to 1986 period on the subject of apportionment and priority status and please also provide any NEB correspondence ruling on the apportionment and priority issues that were the subject of Chevron’s correspondence, submissions, evidence or argument.” (As read)*

673. Do you agree that’s what it says there? That’s the nature of the request?

674. **MR. JUDD:** I believe you read it accurately.

675. **MR. LANGEN:** Okay. And if we go to the next page, very much like -- thank you, right there Ms. Butler.

676. Very much like this proceeding, there appears to have been some amendments to the response but we see a revised response number 38, (e) and (h); do you see that there?

677. **MR. JUDD:** You’re referring to, “Please see the response NEB line”; is that correct?

678. **MR. LANGEN:** That’s right.

679. **MR. JUDD:** I see that.

680. **MR. LANGEN:** And it also says, “Please also see attachment CAPP IR 1.3(e)(h)”.

681. **MR. JUDD:** I see that also.

682. **MR. LANGEN:** Okay. And if we go to the next page we have the attachment that’s referred to in the body of the IR response. And if we go one more page down -- thank you -- and we look at the first paragraph, would you agree that it says Chevron -- sorry. I’ll take a step back. It’s dated January 22<sup>nd</sup>, 1987, it’s addressed to the National Energy Board, Ottawa, Ontario, and would you agree this is a telex?

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683.           **MR. JUDD:** I don't know what the means of communication is but I can see the document.

684.           **MR. LANGEN:** Okay. So let's go back one page just for clarity of the record please. Right there, thank you.

685.           You see in the table it says 2-3 telex message, January 22<sup>nd</sup>, 1987?

686.           **MR. JUDD:** Yes.

687.           **MR. LANGEN:** So we can agree that it's a telex from Chevron to the National Energy Board?

688.           **MR. JUDD:** Correct, Chevron Canada Limited. Correct.

689.           **MR. LANGEN:** Thank you. Ms. Butler, if we go down to the next page. Thank you.

690.           And would you agree that it states -- the first paragraph -- first full paragraph:

*“Chevron Canada has received notice from Trans Mountain Pipeline Co. Ltd. of its intention to limit all shippers [on its pipe --] on its line to 85 percent of nominated volumes delivered in February, evidently because of heavy oil movements and deliveries of supplemental crude to Washington State.” (As read)*

691.           The next paragraph says:

*“Chevron Canada Ltd. hereby applies for priority status on the Trans Mountain Pipeline for deliveries to its Burnaby refinery based on the following considerations.” (As read)*

692.           Do you agree that's what it says there?

693.           **MR. JUDD:** I believe you read it accurately.

694.           **MR. LANGEN:** Okay. And would you agree that it seems to

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- indicate that Chevron is seeking a PDD because of apportionment on the Trans Mountain pipeline system?
695.           **MR. JUDD:** I'm not familiar with the particular actions on this day. It speaks to priority status. I don't know what status it's referring to.
696.           **MR. LANGEN:** So you don't believe that this statement would be indicative of the fact that Chevron was applying to the Board to obtain status so as to have adequate supply to run its refinery?
697.           **MR. JUDD:** I'm unfamiliar with this finding. I really can't speak to it. I can see what the written telex describes but I don't -- I can't hypothesize what it's going to.
698.           **MR. LANGEN:** And just for certainty here, Mr. Gray, would that be your evidence as well?
699.           **MR. GRAY:** Yes it is.
700.           **MR. LANGEN:** And Mr. Fountain, would that be your evidence as well?
701.           **MR. FOUNTAIN:** Yes.
702.           **MR. LANGEN:** So you -- so I'll ask you this question. Would you -- you cannot tell me then whether or not Chevron applied for priority destination in 1987?
703.           **MR. JUDD:** I'm not familiar with that application.
704.           **MR. LANGEN:** Mr. Chairman, if we could get an exhibit number?
705.           **THE CHAIRMAN:** Ms. Butler?
706.           **THE REGULATORY OFFICER:** That will be Exhibit C4-15.

--- **EXHIBIT NO./PIÈCE No. C4-15:**

*BP Canada aid to cross #21 to Chevron Canada*

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707.           **THE CHAIRMAN:** Thank you.

708.           **MR. LANGEN:** Gentleman, in your opening statement you identify three constituents who have benefited from the refinery being positioned where it's at and being connected to the -- sorry, to Trans Mountain pipeline; do you recollect that?

709.           **MR. JUDD:** Yes.

710.           **MR. LANGEN:** Okay. And those three constituents, as I understand it, are Chevron, Alberta producers and the public?

711.           **MR. JUDD:** So I think there were a number of different references in the particular document. So I don't know if you want to refer me to a particular location because we spoke of a number of different benefits through the document.

712.           **MR. LANGEN:** That's fine.

713.           Ms. Butler, if we can pull up -- oh, you have it. Thank you. If we go to the second-last paragraph you'll see that it says:

*"The decision in the 1950s to establish the Burnaby refinery and rely on the pipeline for service has been a good one for Chevron, Alberta producers and the public interest at large."*  
(As read)

714.           **MR. JUDD:** Yes, I can see that.

715.           **MR. LANGEN:** The second-last sentence it says:

*"The issue raised in this application is whether these benefits will be available to the three constituencies going forward."*  
(As read)

716.           And I'm just wanting to confirm that the constituencies that you're referring to there are Chevron, Alberta producers and the public?

717.           **MR. JUDD:** In that particular paragraph those are the three constituencies being referred to.

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718.           **MR. LANGEN:** And can you tell me what Alberta producers are in the room today who have filed evidence in support of this application?
719.           **MR. JUDD:** No one in the room today that I'm aware of that's filed evidence.
720.           **MR. LANGEN:** Now, as I understand it, gentlemen -- I'm going to talk about the Chevron -- the wharf at the Chevron refinery -- the Burnaby refinery. I'll just refer to it as the Chevron wharf. We have an understanding?
721.           And as I understand it, you have certain restrictions on the size of vessel that can be accommodated at that wharf; is that right?
722.           **MR. GRAY:** That's correct.
723.           **MR. LANGEN:** And as I understand it, ships can be accommodated at that wharf but there are physical restrictions on size?
724.           **MR. GRAY:** Yes, there are physical limitations as to the size of the ship.
725.           **MR. LANGEN:** And your evidence is that you can currently deliver crude oil across the wharf by barge, and you did so most recently in 1994 and 1997; is that correct?
726.           **MR. GRAY:** In 1985 and 1987 we did have some experimental imports by barge. Currently the wharf is fully utilized exporting and importing of product at the production of the refinery and its movement of those products to the market.
727.           **MR. LANGEN:** So Mr. Gray, I think you said it was fully utilized, and that doesn't appear in your evidence. So are you saying that the wharf at the Burnaby refinery is fully utilized exporting refined products and there is no time that it could be used for other services, for example, the import of crude across it?
728.           **MR. GRAY:** So the wharf is currently heavily utilized. Wharf scheduling is -- you know, whether something is fully utilized and how you manage all of those vessels is a challenge. We are currently near capacity or at capacity, depending on how you're looking at it. We do -- we have imported, as

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- in my evidence, the intermediates over that dock, and we -- the majority of the dock's volume is for export and movement of products.
729. In addition to the dock constraints that we face, we also have, as we've shown in our evidence, tankage constraints and the ability to manage imports into and coordinate those with pipeline deliveries.
730. **MR. LANGEN:** Okay, I just want to focus on the ability of the dock to handle vessels in and out of it. So I think your evidence is that the primary use of the dock is for refined product export?
731. **MR. GRAY:** That's what it was designed for, yes.
732. **MR. LANGEN:** Okay. And there is some capability to use it for other things with respect to other vessels arriving, however, it's a logistical issue, you have to manage the timing and that sort of thing. Is that a fair assessment?
733. **MR. GRAY:** Yes.
734. **MR. LANGEN:** And would you agree that such timing and coordination constraints are typical for refineries that have docks that export and import?
735. **MR. GRAY:** So I can't speak to other refineries, other than the Barnaby refinery dock, and I also have some insight into the Pascagoula operation. The facility at Burnaby I would -- in my experience, that dock is very congested and is at or near its capacity on a normal operating basis.
736. **MR. LANGEN:** But you have no -- you just indicated you have no understanding of other refinery docks. You can't comment on how congested it is relative to others. Is that fair?
737. **MR. GRAY:** No. As I said, I could compare it to -- the Burnaby to the Pascagoula refinery and its operation, although they're very different operations. Other refineries I would not be able -- that would just be speculation on my part and I would not be able to comment.
738. **MR. LANGEN:** Chevron's evidence is that there is -- this is at IRR -- sorry -- Information Request BP13. It's B-07g, Adobe page 18. It's your evidence that there is a lack of available barges that could be used by Chevron to

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deliver crude across the Chevron wharf?

739.           **MR. FOUNTAIN:** Forgive me; I thought you said 13g. Is that what you said?

740.           **MR. LANGEN:** Sorry; it's Exhibit B-07g.

741.           **MR. FOUNTAIN:** Right.

742.           **MR. LANGEN:** It's the IR response number 13 to BP. So Chevron's response 13 to BP. Do you have it?

743.           **MR. FOUNTAIN:** I have it in front of me.

744.           **MR. LANGEN:** Okay. And on -- it's on page 18 of that document. And the first bullet says:

*"The fifth limitation is the lack of available barges of an appropriate size."*

745.           So it's Chevron's evidence that there is a lack of available barges. And my question is has Chevron invested -- or investigated commissioning a barge that would meet the requirements of its wharf?

746.           **MR. GRAY:** So I think my first comment would be that that's one of five constraints on the dock, and as the fifth of the constraints, barge -- Canadian barge availability to move crude is limited to non-existent. And no, Chevron had not considered commissioning the construction of a barge.

747.           **MR. LANGEN:** What type of vessel or vessels does Chevron use to export refined products across the wharf?

748.           **MR. GRAY:** It uses both barges and ships.

749.           **MR. LANGEN:** And are these contracted or proprietary vessels generally?

750.           **MR. GRAY:** A combination of spot and term charter.

751.           **MR. LANGEN:** So sorry, you're talking a language I don't

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understand. Does that mean that they're -- some are owned by Chevron and some are contracted by Chevron?

752.           **MR. GRAY:** No, none are owned by Chevron. They would either be a spot charter of a third-party vessel for single delivery, or they may be term charters which may have multi-year terms so that the barge is dedicated to the use -- or for the use of Chevron.

753.           **MR. LANGEN:** And has Chevron ever investigated having one of those term charter vessels converted for crude oil service so that crude could be delivered across the wharf?

754.           **MR. GRAY:** Currently those vessels are being utilized for product movement so it would be -- it's not a realistic option to take it from product movement and move it into crude. And I think more importantly when you don't have an economic alternative then it doesn't -- where you can justify the costs of conversion or construction of a vessel then it would be imprudent use of -- of one's capital.

755.           **MR. LANGEN:** So I take it that's a no.

756.           **MR. GRAY:** I think I answered the question.

757.           **MR. LANGEN:** I'll ask it again then. Has BP ever investigated having one of the vessels that are under a term charter ---

758.           **MR. GRAY:** I can't speak for BP.

759.           **MR. LANGEN:** Sorry. Chevron. Has Chevron ever investigated having one of those vessels that's under term charter that's used to deliver refined products -- or sorry, to export refined products across your wharf, converted to crude service to import it, yes or no?

760.           **MR. GRAY:** We have not investigated it as it is used for movement of products and would be an uneconomic investment.

761.           **MR. LANGEN:** But you haven't investigated it?

762.           **MR. SANDERSON:** That's what he just said.

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763.           **MR. LANGEN:** Are you aware that some of the Puget Sound refiners have already or are considering delivering mid-continent crude to their refineries using rail to barge to refinery options?
764.           **MR. GRAY:** I'm aware of various projects in moving unit trains into the Pacific Northwest for the supply. Tesoro is one of them that I'm aware of.
765.           **MR. LANGEN:** And are you aware of the process by which those unit trains are off-loaded onto barges and then delivered -- that crude is then delivered to the Puget Sound refiners?
766.           **MR. GRAY:** No I'm not.
767.           **MR. LANGEN:** I take it that Chevron hasn't investigated along with its rail to refinery or rail to truck to refinery off-loading crude from rail cars onto barges for delivery at its wharf?
768.           **MR. FOUNTAIN:** So a couple of things to maybe help add some colour to this conversation and hopefully get to the answer to the question you're asking.
769.           Chevron's had a couple of different things that it's been factoring into its decision-making around alternative supply when we started looking at the investigation. And when we were constrained on -- became constrained on Trans Mountain due to apportionment we considered water-borne receipts, rail receipts and truck receipts as alternatives to the pipe.
770.           The water-borne receipts were quickly eliminated. And the reasoning for that was kind of two-fold. Part of it was an economic decision because at this moment in time it's uneconomic to bring in foreign crudes over the wharf. So to bring in a -- a foreign crude didn't make sense for the refinery in this point of time to be -- it'd be an economically imprudent decision.
771.           The more practical and maybe even the more important issue though was as a member of the Burnaby community and we've become very sensitized to the issues that are of importance to Burnaby. And Burnaby now is becoming a very important hub for the export of Canadian crude to the world.
772.           And you've got the existing Stanovan wharf -- or excuse me, the Westridge dock and you have the expansion of Trans Mountain pipeline which

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- would dramatically increase the export of crude. So what we're -- what we began to -- to factor into our thought processes here was that Burnaby is very sensitive to those water-borne movements in Burrard Inlet.
773. And the thought is that from an industry perspective it's in the industry's interest to be as efficient with those crude movements as possible. And the efficient movement is an export only movement. And so to have crude ships passing in the night under -- under the bridges along Burrard Inlet is not in the community's interest.
774. And so we looked at it from that perspective and quickly eliminated water-borne receipts as a -- as an alternative and focussed on land-based receipts.
775. **MR. LANGEN:** So I'll ask my question again. Did Chevron consider or investigate crude from rail to barge at any point in time?
776. **MR. FOUNTAIN:** No it was eliminated because that would be import crude.
777. **MR. LANGEN:** Now, as I understand it ---
778. **MR. JUDD:** Just a second.
779. **MR. GRAY:** I'd like to correct that response. In our IR response to P66/Shell Exhibit B-07i, 8(d), we indicated that we had reviewed a number of options including rail to terminal to barge to refinery.
780. At the time of the review we were unable to identify a terminal capable of receiving rail that would be able to then put it on a barge and move it to the refinery. Unable to find a third-party that would be willing to work with us, and as we previously discussed, the lack of Canadian barges capable of movement of crude was also a consideration in eliminating that as an option and pursuing the two alternatives to supplement our crude to ensure that we had our minimum supply to meet the 40,000 barrel run rate of the refinery.
781. **MR. JUDD:** I think it's important to note also that the limits at the Stanovan wharf are substantial.
782. And as we've indicated in our -- our evidence that really dwarfs the other considerations and so to go out and try to set up a supply chain when you

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- know you have extreme limitations at a wharf you've got a very -- a community very sensitive to those marine movements, to go out and investigate other supply chains when those things are already known to you would just be a wasteful use of resources, particularly when you know that the -- the alternative source for supply is not economic to the pipe.
783.           **MR. LANGEN:** As I understand it Chevron has on occasion as part of its mitigation bid on a spot dock capacity at the Westridge dock and diverted; is that correct?
784.           **MR. GRAY:** That is correct.
785.           **MR. LANGEN:** And as I understand it Chevron has also been a dock shipper for export off the Westridge dock?
786.           **MR. GRAY:** In its -- in the history of the Westridge dock, yes that is correct.
787.           **MR. LANGEN:** Okay. And I take it's fair to say that when it was a dock shipper or when it is a dock shipper it is responsible for coordinating the arrival of its vessel at the Westridge dock; is that right?
788.           **MR. GRAY:** So that falls under the Chevron Canada Resources when they nominate to the Westridge dock and export it, it is not managed under the Chevron Canada Limited.
789.           **MR. LANGEN:** Just as an aside, it's my understanding that in addition to crude oil being shipped across the Westridge dock for export Trans Mountain receives refined product deliveries across that dock for import, jet fuel primarily; is that fair?
790.           **MR. GRAY:** I'm aware that they have -- they -- they do import or I shouldn't say -- that they have the facilities to import and contract out those facilities for use for importation of jet fuel for YVR, Vancouver's airport.
791.           **MR. LANGEN:** And -- so clearly Trans Mountain would have to manage the logistics of outgoing export crude tankers and incoming vessels carrying refined product for import across that dock; correct?
792.           **MR. GRAY:** I can't speak for Westridge and their management of

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- their dock.
793.           **MR. LANGEN:** And the jet fuel that's delivered to the Trans Mountain terminal across the Westridge dock, is it delivered by pipeline to the Vancouver Airport?
794.           **MR. GRAY:** That would be my understanding that the importation into a shore tank that then goes through the Trans Mountain jet system and ultimately -- with the ultimate destination of Vancouver Airport.
795.           **MR. LANGEN:** And do you know whether that jet fuel is -- has a residency time in the tankage at Trans Mountain's terminal?
796.           **MR. GRAY:** I have no insight into how they manage that system.
797.           **MR. LANGEN:** That's fair.
798.           And I understand Chevron produces jet fuel at the Burnaby refinery?
799.           **MR. GRAY:** That's one of the products we produce, yes.
800.           **MR. LANGEN:** Okay. And it's delivered by pipeline to the Vancouver Airport?
801.           **MR. GRAY:** Correct. Produced, terminalled through our Area 1 facility and pumped to -- through the Kinder Morgan's facility, up to Burnaby Mountain and then to the airport.
802.           **MR. LANGEN:** Okay. And is it at any point in time stored in tankage at Westridge's facility -- or sorry at the Trans Mountain's facility?
803.           **MR. GRAY:** No, it is not.
804.           **MR. LANGEN:** Has Chevron ever delivered refined products across the Trans Mountain Westridge dock?
805.           **MR. GRAY:** Not to my knowledge.
806.           **MR. LANGEN:** Now, as I understand it, the crude oil that's delivered on Trans Mountain and ultimately to the Burnaby refinery is landed at

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the Trans Mountain terminal, is that fair, at least initially?

807. **MR. GRAY:** Correct.

808. **MR. LANGEN:** And it goes into tankage and then it's delivered rateably to the Burnaby refinery; is that right?

809. **MR. GRAY:** Deliveries are coordinated between the refinery tankage and its ongoing rateable demand and the scheduling of the receipts into Kinder Morgan's tank farm at Burnaby Mountain, yes.

810. **MR. LANGEN:** Okay. And so on occasion does it go into tankage at -- it doesn't get -- it doesn't come right off the pipeline, through the terminal and into your refinery, it lands in tankage at Trans Mountain's terminal and ---

811. **MR. GRAY:** Yes, it does.

812. **MR. LANGEN:** --- then it's delivered right away; is that correct?

813. **MR. GRAY:** There are -- there are tanks allocated at Kinder Morgan's facility, yes.

814. **MR. LANGEN:** Okay. And what's the average residency time of that crude oil when it sits in the Trans Mountain terminal?

815. **MR. GRAY:** Off the top of my head I wouldn't be able to answer that, I'd need to spend a few minutes reviewing the capacities of the tanks and the throughput.

816. **MR. LANGEN:** Is it a day, two days?

817. **MR. GRAY:** Yeah, I would refer the question to Trans Mountain, they -- and the manage -- they manage those tanks.

--- (A short pause/Courte pause)

818. **MR. LANGEN:** So I'll get you to -- if we can pull up, Ms. Butler, Exhibit B-07g and we go to Adobe page 18, please, and if we go to the last bullet on the page. Thank you.

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819. The last sentence says:

*“The Burnaby Refinery’s designed to receive rateable deliveries from the Pipeline and Trans Mountain seeks to make those deliveries rateably to avoid impacts on other shippers.”*

820. And I’m just going to come back to ---

821. **MR. JUDD:** We’re still looking for the reference here.

822. **MR. SANDERSON:** Mr. Judd, I think it’s the last sentence in the last bullet in Part B.

823. **MR. JUDD:** We found it.

824. **MR. GRAY:** Sorry, you fear that -- I’m supposed to be answering a question but maybe you can answer --

825. **MR. LANGEN:** No, I ---

826. **MR. GRAY:** --- repeat the question for me.

827. **MR. LANGEN:** I haven’t posed the question ---

828. **MR. GRAY:** Okay. There we go.

829. **MR. LANGEN:** --- I just wanted to make sure you were --

830. **MR. GRAY:** I ---

831. **MR. LANGEN:** --- we were on the same page. I think we are.

832. So it indicates here clearly that the Burnaby refinery receives rateable deliveries. And I just want to -- I want you to explain to me what that means.

833. **MR. GRAY:** Rateable deliveries are typically every second day the refinery is taking a crude receipt transfer from the Kinder Morgan tank farm into the refinery.

834. **MR. LANGEN:** So I take it then that the answer to a typical

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- residency time might be two days or every second day? You said every second day you're taking deliveries.
835.           **MR. GRAY:** To calculate what the residency time in Kinder Morgan's tanks, you'd have to actually take their volume and divide it by our run capacity.
836.           **MR. LANGEN:** Okay. Is it -- what I'm -- I'm not trying to be difficult, I'm just trying to understand if you're receiving crude every second day from Trans Mountain's terminal, I'm just trying to understand if -- whether or not there is some crude allotted to Chevron that's sitting in there at the Trans Mountain terminal for a period of time.
837.           **MR. GRAY:** It could be no crude in the tanks that are allocated to us, they could be right -- you know, full to capacity all depending upon when the receipts were coming down the Mainline and into Burnaby terminal. We coordinate and work with Kinder Morgan with our run rates to ensure that they don't impact the scheduling of the Mainline to maximize its capacity.
838.           **MR. LANGEN:** And does Chevron have an agreement with Kinder Morgan with respect to that coordination and the storage of its crude oil?
839.           **MR. GRAY:** Well, the tariff is the contract between the two parties in management of the crude through that system to the refinery.
840.           **MR. LANGEN:** And you've indicated earlier and it's in your evidence that one of the constraints faced by the Burnaby refinery with respect to taking water-borne crude across its wharf is the need for additional tankage; you need 300,000 barrels of additional tankage.
841.           **MR. GRAY:** Can you direct me to particular evidence you're referring to?
842.           **MR. LANGEN:** Sure. Ms. Butler, if we go up one page on the exhibit that's on the ---
843.           **MR. GRAY:** So as our evidence in context for a MR Class vessel coming into the Burnaby refinery dock -- which a lightly loaded MR is the largest vessel that we could bring in -- that to offload that in an efficient manner would need approximately 300,000 barrels worth of storage capacity to be able to handle

that volume.

844.           **MR. LANGEN:** And as I understand it that could -- that would be one tank potentially?

845.           **MR. GRAY:** I would suggest my knowledge of the Burnaby refinery that there is no location that you could build a 300,000 barrel tank. It would probably end up being multiple smaller tanks given the topography of the site.

846.           **MR. LANGEN:** I suspected that'd be your response. Have you ever investigated or approached Trans Mountain about obtaining a tankage or terminalling facilities at its terminal?

--- (A short pause/Courte pause)

847.           **MR. GRAY:** So in relation to additional crude at the Kinder Morgan facility, over you know the 50 years of the refinery's operation, there have been many discussions about crude tankage and allocation of tanks. In particular, in the last several years, I don't believe there has been any direct discussions with additional tankage at Kinder Morgan's facility.

848.           I would also like to add that, in terms of importation of an alternate source over the wharf, the tankage is just one of the limitations and it's the culmination of all of those limitations taken together that really make it an unrealistic alternative delivery of crude to the refinery.

849.           **MR. LANGEN:** Thank you, Mr. Gray, but I'm just investigating the logistics.

850.           There are many facets to this Application, I think we can agree, and I just want to investigate the logistics.

851.           So I take it your evidence and your response to my question is that, recently, or more recently Chevron has not investigated obtaining tankage or terminalling services from Trans Mountain?

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

853.           **MR. LANGEN:** And I take it the response would be similar with respect to whether or not Chevron has approached Trans Mountain about

importing crude across the Westridge dock?

--- (A short pause/Courte pause)

854.           **MR. JUDD:** So I think we gave a response earlier to -- besides the physical limitations that Mr. Gray spoke to here, it's not an economic alternative to supply by the pipe, and -- yeah, the supply by water is not an economic alternative to supply by the pipe. We are very sensitive to the concept of crude ships going out by water and crude ships passing in the night by water to come and deliver it to the refinery.

855.           So, logistically, the refinery is very challenged on a number of fronts: tankage, wharf, pipeline capacity to the refinery. We're sensitive to the community's needs, and it's not an economic alternative to the crude we received on the systems.

856.           And so exploring options that drive us in a direction of a less economic supply in reference to the pipe would be wasteful as far as how we utilize our resources.

857.           **MR. LANGEN:** So I take it the response then is 'no'?

858.           **MR. JUDD:** I think the response was more complicated than 'no' but with some reasons as to why we haven't explored that with Kinder Morgan.

859.           **MR. LANGEN:** Would you agree, though -- I'm going to this idea of ships passing in the night.

860.           Would you agree that any ship that's loaded at the Westridge dock would have arrived empty?

--- (A short pause/Courte pause)

861.           **MR. FOUNTAIN:** Well, if you're both bringing in full vessels and taking out full vessels, you're duplicating the numbers of ships that are passing in the night.

862.           To answer your question specifically, if you're looking at today's operation: they bring in an empty vessel, they bring it to the dock, they load it and they take it out as a full vessel, and that's the operation.

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863. But if you started bringing in full vessels and offloading full vessels, now, you're duplicating the volume.

864. **MR. LANGEN:** But there could be a possibility where a full vessel could come in and off load and that same vessel could be loaded?

865. **MR. JUDD:** So I think Mr. Fountain's point is that, while the vessel may be used more efficiently, the volume of crude moved over the water would be doubled.

866. And it still doesn't address the other limitations that we've spoken to in regards to the geographic limitations of the refinery, our concerns to sensitivities in the community and ...

867. I think that summarizes the response.

868. **MR. LANGEN:** In your opening statement -- and it's a theme throughout your evidence -- you indicate that the Burnaby refinery has been shipping crude on the Trans Mountain Pipeline since 1954 and that it provided financial support at that time, in 1954, for the Trans Mountain Pipeline to be constructed.

869. Is that correct?

870. **MR. JUDD:** That's correct.

871. **MR. LANGEN:** And is it fair to say that other than paying pipeline tolls, like all other shippers on Trans Mountain, Chevron does not now provide any financial support to Trans Mountain?

872. **MR. JUDD:** Just the revenue that we supplied through the tolls.

873. **MR. LANGEN:** And in seeking the PDD that it's applied for, Chevron does not come before the Board seeking any form of acquired rights.

874. Is that correct?

875. **MR. JUDD:** That is correct.

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876.           **MR. LANGEN:** And so Chevron claims no acquired rights by virtue that it took service and has shipped on Trans Mountain since 1954?

--- (A short pause/Courte pause)

877.           **MR. JUDD:** We don't view it as an acquired right.

878.           We try and make the point that we are dependent on that system for our supply.

879.           **MR. LANGEN:** I think your evidence is clear on that. I just want to be clear here.

880.           You do not claim any acquired right by virtue that you have taken service on and have shipped on Trans Mountain since 1954?

881.           **MR. JUDD:** We assume no acquired rights.

882.           **MR. LANGEN:** And you assume no acquired rights by virtue that it has -- that is Chevron Burnaby refinery has been one of the larger shippers historically on the system?

883.           **MR. JUDD:** So, again, we assume no acquired rights.

884.           **MR. LANGEN:** Gentlemen, do you have the aid to cross number 16 that we provided to your counsel?

--- (A short pause/Courte pause)

885.           **MR. JUDD:** We have it in front of us.

886.           **MR. LANGEN:** And I take it, as you've indicated previously, you've skimmed this, you haven't thoroughly reviewed it.

887.           Is that a fair statement?

888.           **MR. JUDD:** That is correct.

889.           **MR. LANGEN:** Would you agree that the second page behind the title page indicates that it's a transcript from the RH001-2012 proceeding,

specifically, Volume 6?

890. **MR. JUDD:** Yes.

891. **MR. LANGEN:** And if I can get you to go to the page that has paragraph 7365 on it, the very top page.

892. Now, you're familiar with this proceeding, I'm assuming, the one that's referenced in this transcript?

893. **MR. JUDD:** Yes.

894. **MR. LANGEN:** And this was the proceeding ---

895. **MR. FOUNTAIN:** And you said "7365", just for clarity?

896. **MR. LANGEN:** That's right.

897. **MR. FOUNTAIN:** Thank you.

898. **MR. LANGEN:** And you're familiar with the RH001-2012 proceeding, which was Trans Mountain's Application with respect to tolls on its expansion?

899. You're familiar with that proceeding?

900. **MR. FOUNTAIN:** Yes.

901. **MR. LANGEN:** And you're familiar with the fact that Chevron provided final argument in that proceeding?

902. **MR. FOUNTAIN:** Yes.

903. **MR. LANGEN:** Okay.

904. So if we go down to paragraph 7370, you'll see there that -- and this is the final argument by Mr. Bergner, your counsel, who's here today, he says at 7370:

*"But faced with this important application at this extremely*

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*difficult time, it's more important than ever that this Board embrace and exercise its regulatory powers in respect of tolling pipelines.” (As read)*

905. And my -- do you agree that's what it says there?

906. **MR. FOUNTAIN:** I think you read it correctly, yes.

907. **MR. LANGEN:** Okay.

908. And my question is: should the Board do that here in this application?

909. **MR. FOUNTAIN:** We think the Board should always exercise its regulatory responsibilities with regard to pipelines.

910. **MR. LANGEN:** Okay. And if we go to paragraph 7372, it's right at the bottom and I'll start at the second sentence. It says:

*“And so again, Chevron urges the Board to exercise its oversight in a careful exercise of its regulatory powers.” (As read)*

911. Do you agree that's what it says?

912. **MR. FOUNTAIN:** Yes.

913. **MR. LANGEN:** And should the Board do that here as well?

914. **MR. FOUNTAIN:** I believe the Board should exercise its regulatory powers as it relates to pipeline issues.

915. **MR. LANGEN:** And should it do a careful exercise of its regulatory powers?

916. **MR. FOUNTAIN:** We trust that the Board is always careful in its exercise of its regulatory powers.

917. **MR. LANGEN:** Mr. Chairman, I don't intend to make this as an exhibit, if that's okay with you.

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918.           **THE CHAIRMAN:** That's fine. I rather it wouldn't be at this time.

919.           **MR. LANGEN:** Gentlemen, Trans Mountain underwent an Anchor Loop expansion and a subsequent pump station expansion in and around 2005 through 2008. Is that your understanding?

920.           **MR. FOUNTAIN:** I'm sorry, I was shuffling papers. Could you repeat the question? I apologize.

921.           **MR. LANGEN:** Trans Mountain underwent the Anchor Loop expansion as well as a subsequent pump station expansion in and around 2005 through 2008; is that correct?

922.           **MR. FOUNTAIN:** I could be wrong but I understand it to be reversed. I think the -- there was a horsepower expansion that took place before the Anchor Loop but generally, your characterization is correct.

923.           **MR. LANGEN:** Your understanding is probably better than mine so.

924.           And I understand that Chevron supported those expansions?

925.           **MR. GRAY:** Yes we did.

926.           **MR. LANGEN:** And those two projects combined increased Trans Mountain's capacity from 220,000 barrels per day to 300,000 barrels per day approximately; is that correct?

927.           **MR. GRAY:** Subject to check, I believe that's correct, yes.

928.           **MR. LANGEN:** I'll try this without the aid and then if we need the aid we can use it. Would you agree that in making the pump station expansion application in July 2005, Trans Mountain was of the view that that expansion would not eliminate the need for apportionment?

929.           **MR. GRAY:** I can't speak to Trans Mountain.

930.           **MR. LANGEN:** So gentlemen, I'll get you to pull up aid to cross number 15, please.

--- (A short pause/Courte pause)

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931.           **MR. LANGEN:** And we'll go to the first page after the title page please. Thank you.

932.           So you'll see here that this is a letter dated July 12<sup>th</sup>, 2005, from Terasen Pipelines, the then owner of Trans Mountain -- the Trans Mountain Pipeline system. And you would agree that it says -- the re line is:

*"Terasen Pipeline Section 58 Application Trans Mountain Pump Station Expansion Project." (As read)*

933.           **MR. FOUNTAIN:** We have it in front of us, yes.

934.           **MR. LANGEN:** Okay. And if you go to the last paragraph, it says:

*"The proposed project will address existing capacity constraints and will increase the ability for Canadian producers and marketers to access west coast markets." (As read)*

935.           Do you agree that's what it says there?

936.           **MR. FOUNTAIN:** That's how I read it.

937.           **MR. LANGEN:** And you have no reason to quibble with that?

938.           **MR. FOUNTAIN:** No reason.

939.           **MR. LANGEN:** Okay. And if we can go to the page that's -- has on the top of it 7.2 Transportation Matters. So there's a table of contents. This was provided for context for my friends. Ms. Butler, if we keep going please.

940.           **MR. SANDERSON:** Sorry, Mr. Langen, what page was it you wanted the witness to go to, 7-5?

941.           **MR. LANGEN:** Yeah.

942.           Keep going, Ms. Butler, please. Right there, thank you. If we go -- actually, sorry, we'll go to the next page, 7-6. Thank you.

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943. And would you agree that at the heading 7.2.2, it says, "Capacity requirements" and Trans Mountain -- it says:

*"The Trans Mountain west coast market is driven by the following fundamentals; increasing supply of western Canadian crude with limited market outlets, especially for heavy crude." (As read)*

944. And it also says:

*"Growing demand for heavy crude oil in California to replace declining production, potential for growing demand in the Washington refinery market, especially in the longer term to replace Alaska north slope crude supply, potential growth to the Asian refinery market, finished product market in B.C. is expect to resume some of the strong growth that was experienced in the latter part of the 1990s." (As read)*

945. Do you agree that's what it says there?

946. **MR. JUDD:** So there was some portions that you skipped over but the portions that you read, I agree that you read them accurately.

947. **MR. LANGEN:** That's fair. Thank you.

948. So Dr. York, I was going to say good morning but it's good afternoon now.

949. Would you agree that some of the reasons for the differential that we're seeing today between Brent and mid-continent crude and specifically crude at Edmonton, are, in fact, flowing out of these exact reasons out here -- outlined here? There has been increasing supply of western Canadian crude with limited market outlets?

950. **DR. YORK:** With respect to light crude differentials between Brent and Edmonton light crudes, the heavy Canadian crude wouldn't impact the differential. It has its own dynamics which are driving differentials.

951. **MR. LANGEN:** Okay. So let's talk about light crude. You would agree that the -- one of the reasons why we have the differential today is because

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there's not enough pipeline capacity to get that crude out of western Canada; correct?

952.           **DR. YORK:** For the heavy crude, that's correct. We are at -- we are either at or rapidly approaching that limit.

953.           **MR. LANGEN:** And would you agree then that there's a growing demand for heavy crude oil in California to replace declining production?

954.           **DR. YORK:** There's declining crude production -- there's declining heavy crude production in California. It's not clear if regulatory constraints are going to allow that crude to be replaced by Canadian heavy oil.

955.           **MR. LANGEN:** But there would be a demand if there were no regulatory constraints; correct?

956.           **DR. YORK:** There would be demand for heavy crude that Canadian -- that California production could not satisfy.

957.           **MR. LANGEN:** And would you agree that there's currently a growing demand or demand in its entirety in the Washington refinery market due to declining ANS production?

958.           **DR. YORK:** I'm not aware that the Puget Sound refineries are looking to increase utilization rates.

959.           **MR. LANGEN:** That wasn't my question. My question is there is a demand for -- there's demand for western Canadian crude oil to be supplied to Puget Sound refiners as a result of declining ANS supply.

960.           **DR. YORK:** I wouldn't eliminate just to western Canadian crude. We've seen increase in volumes of foreign-flagged crudes coming in as well.

961.           **MR. LANGEN:** But western Canadian crude would be one of those that are sought after by Puget Sound refiners?

962.           **DR. YORK:** One but not exclusive.

963.           **MR. LANGEN:** And you would agree that there is potential growth to serve the Asian refinery market; correct?

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964.           **DR. YORK:** Correct. There is a -- there is crude -- crude demand growth in Asia.

965.           **MR. LANGEN:** Okay.

966.           Now, gentlemen, I'll get you to go to page -- the next page 7-7. And we just go to the sentence underneath Figure 7.4, right there Trans Mountain says:

*"The additional capacity provided by the project is not expected to eliminate the need for apportionment on the Trans Mountain pipeline."* (As read)

967.           Do you agree that's what it says there?

968.           **DR. YORK:** Yes.

969.           **MR. LANGEN:** So at the time this application was made which was in 2005, Trans Mountain was the view -- was of the view that apportionment would continue on its pipeline system?

970.           **MR. FOUNTAIN:** Well, I think there's a little bit more context to that. Part of it, I think, and I can't speak to Trans Mountain's frame of mind that caused them to write this, but they were already proposing the Anchor Loop expansion at that period in time.

971.           So that leads me to believe that it was in their mind that the horsepower expansion was one of a two-step -- of a two initial step process that they were already engaged in to increase capacity. And my interpretation of this line is that the horsepower expansion alone will not alleviate apportionment but that the Anchor Loop -- it doesn't speak to the Anchor Loop expansion here but the belief I think was that that would address apportionment.

972.           **MR. LANGEN:** So that leads nicely into my next aid to cross-examination which is aid number 19.

973.           And while we're here Mr. Chairman, if we can get an exhibit number.

974.           **MR. CHAIRMAN:** Ms. Butler?

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975.           **THE REGULATORY OFFICER:** It will be Exhibit C4-16.
976.           **THE CHAIRMAN:** Sorry, Mr. Sanderson, are you objecting to this  
being ---
977.           **MR. SANDERSON:** Mr. Chairman, I don't think so. I think I won't  
object. You know, I'll just make an observation I think.
978.           To the extent that it assists the record to have on it the document which  
these witnesses were referring to of course I'm quite content with that. I don't  
want to see a broad filing of material from other proceedings to which these  
witnesses weren't party and then an interpretation of these documents  
independent from what these witnesses have said.
979.           So I'll just make that general note again that the only value of this  
document is the extents to which they accepted it captured their views because of  
course they can't speak to anything else.
980.           **THE CHAIRMAN:** With that clarification it'll stand as an exhibit.
981.           Thank you.
982.           **THE REGULATORY OFFICER:** Exhibit C4-16.
- **EXHIBIT NO./PIÈCE No. C4-16:**
- BP Canada aid to cross #15 to Chevron Canada*
983.           **MR. LANGEN:** Thank you.
984.           Do you have that aid in front of you gentlemen?
985.           **MR. JUDD:** That's correct.
986.           **MR. LANGEN:** You would agree that the second page is the title  
page to a Board Decision OH-1-2006?
987.           **THE REGULATORY OFFICER:** Could you repeat that please?  
Aid to cross number 19 is it?

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988. **MR. LANGEN:** Sorry. Number 19.

989. You agree that it's -- the first page is a -- is the cover page to NEB Decision OH-1-2006.

990. **MR. FOUNTAIN:** Correct.

991. **MR. LANGEN:** And this is the Anchor Loop decision would you agree with that?

992. **MR. FOUNTAIN:** It appears that way.

993. **MR. LANGEN:** Okay. And if we go to the page, hard copy page number 36.

994. Do you have it in front of you?

995. **MR. FOUNTAIN:** Yes.

996. **MR. LANGEN:** Would you agree, if we go to the fourth full paragraph, it notes:

*“Terasen noted that apportionment of pipeline capacity, in light of growing supply and increased market demand, has resulted in significant uncertainty for shippers on the Trans Mountain system and lost opportunities for producers. Terasen concluded that the significant level of apportionment was demonstrative of the need to expand the Trans Mountain [pipeline] system.”*

997. The next sentence goes on to read:

*“Terasen indicated that, once the incremental capacity from the Project becomes available in 2008, the Trans Mountain [pipeline] system is expected to continue to operate at capacity.”*

998. Do you agree that's what it says there?

999. **MR. JUDD:** So I believe you read it correctly.

1000.           **MR. LANGEN:** Okay.

1001.           And so I think, Mr. Fountain, to the point you made earlier, when Trans Mountain embarked on its -- to use your term -- the horsepower expansion, the pipeline was an apportionment and that wasn't going to solve that apportionment issue. The Anchor Loop was in the background. They made their application. They got approval.

1002.           And here Terasen indicated that although there would be additional capacity added because of the Anchor Loop the pipeline would continue to operate at capacity. Would you agree with that?

1003.           **MR. FOUNTAIN:** We can't speak to their intent. We can read their words and then we also have the benefit of history, and so once the Anchor Loop project was completed from that period up until November of 2010 there wasn't apportionment.

1004.           So even if it was their belief going in that it was going to operate at full capacity it in fact did not until November of 2010.

1005.           **MR. LANGEN:** That's fair. But you have no reason to disagree with how the Board has outlined tariffs and its position with respect to capacity?

1006.           **MR. JUDD:** So I don't think we've looked at this in detail enough to know whether or not we have a reason to disagree.

1007.           So we're just seeing these words and I think we take the words at their face value. But to ask us if we've analyzed or understand all the intent and all that went on with this we don't.

1008.           **MR. LANGEN:** So certainly though Terasen wouldn't have misrepresented its view to the Board would it?

1009.           **MR. SANDERSON:** I'd ask the witness not to answer that.

1010.           **MR. LANGEN:** As I understand it, gentlemen, in May 2006, before the Anchor Loop expansion was approved Kinder Morgan launched an open season to add an additional 100,000 barrels per day of capacity to the Trans Mountain pipeline system; is that -- is that correct?

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1011.           **MR. GRAY:** It's my understanding, yes.
1012.           **MR. LANGEN:** Chevron tendered for firm service in that open season?
1013.           **MR. GRAY:** Yes, we supported the open season.
1014.           **MR. LANGEN:** And when Chevron tendered it tendered for a five-year term; is that correct?
1015.           **MR. GRAY:** I believe that's to be the case, yes.
1016.           **MR. LANGEN:** And that open season was structured so as to permit up to 85 percent of the total pipeline capacity be contracted as -- as firm service; is that right?
1017.           **MR. GRAY:** I'm not aware of the details of the open season.
1018.           **MR. LANGEN:** But you tendered on it?
1019.           **MR. GRAY:** Chevron Canada tendered on it, yes. I personally am not aware of the details of that particular bid.
1020.           **MR. LANGEN:** Let's go to aid to cross number 20, please.
1021.           **MR. JUDD:** So we're having a hard time hearing what you're referring to sorry.
1022.           **MR. LANGEN:** Sorry. I apologize. We're going to aid to cross number 20, please.

--- (A short pause/Courte pause)

1023.           **MR. LANGEN:** And if we go to the second page, you'll see that it's IR response from Trans Mountain to ConocoPhillips Canada Resources Corp. in the RH-2-2011 proceeding, which was the Firm Service proceeding. And you'll see that if we go to paragraph (c), the request was:

*"To the extent that any open seasons were conducted in respect*

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*of either TMX-2 or TMX-3, please provide all open season documentation and the results of the open seasons or expressions of interest processes.” (As read)*

1024. Do you see that?

1025. **MR. JUDD:** Yes.

1026. **MR. LANGEN:** And if we go to the response, which is on the next page, it says:

*“Trans Mountain has attached the open season documents from the 2006 TMX open season.” (As read)*

1027. And then, if you go to the next page, we’ve included excerpts of that attachment. The first page is titled “Expansion and Firm Service Transportation Service Agreement”. It’s dated July 17<sup>th</sup>, 2006. Do you see that?

1028. **MR. FOUNTAIN:** I’m sorry. You lost me. So we -- I got to the point where the results of the open season were confidential, and then you went to the next page and it -- what I was looking at didn’t seem to correlate with what you were saying I should be seeing.

1029. **MR. LANGEN:** Okay. So if you go to the next -- flip again.

1030. Do you have a page that’s titled “Expansion and Firm Service Transportation Service Agreement”?

1031. **MR. FOUNTAIN:** Yes.

1032. **MR. LANGEN:** Okay.

1033. **MR. FOUNTAIN:** Thank you.

1034. **MR. LANGEN:** And that is dated July 17<sup>th</sup>, 2006. And this would have been the transportation service agreement that Chevron would have executed when it tendered for the open season for TMX-2; correct?

1035. **MR. FOUNTAIN:** None of us participated in the commitment that was made. I can’t swear that the draft Chevron received is the equivalent of this

draft. I don't -- can't speak to it.

1036.           **MR. LANGEN:** Okay. Well, maybe we should do it this way. Will you provide an undertaking to provide a copy of the document that you executed?

1037.           **MR. SANDERSON:** Not -- not yet, Chevron won't. That is, I'm not sure I understand the foundation for the undertaking.

1038.           I guess I don't understand the relevance of the line we're taking at the moment. I'm sure there must be some, but before we agree to an undertaking, let's -- let's hear what Mr. Langen has to say about why we should go back into the particulars of a bid that Chevron made seven years ago and not through any of these witnesses.

1039.           **MR. LANGEN:** Mr. Chairman, I'm quite happy to. If we go to Exhibit B07-I, Adobe page 16, please. And if we go down to the response, please. Thank you.

1040.           This is a response from Chevron to Phillips 66 and Shell Canada. It's response number 13. They were requested -- I'll read the request. It says:

*“Other than the steps described in the Application and Evidence [...] please describe any additional steps Chevron has taken over the past ten years to mitigate the effects of the Burnaby refinery having experienced apportionment on the [...] [Trans Mountain pipeline] system.”*

1041.           And the response is:

*“In addition to the steps described in the Application and Evidence [...], other steps Chevron has taken over the past ten years to mitigate the effects of the Burnaby refinery having experienced apportionment on the TMPL system have included:*

*Bidding for firm service [...] [on the] TMPL expansion in Open Season in 2006.”*

1042.           And I would submit to you, Mr. Chairman, that I'm just trying to explore the nature of the terms of that open season that they tendered on in order

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- to understand their supply issues historically. And it's clearly their evidence that this is one of the steps that they've taken to try to mitigate supply issues and I want to explore that with them with respect to the nature of the commercial agreement they would have entered into in the course of applying that mitigation as they framed it.
1043.           **MR. SANDERSON:** Mr. Chairman, I have no objection and didn't object, in fact, to a question from Mr. Langen confirming that the bid took place. And Mr. Fountain, I think, responded or Mr. Gray did, I guess. But the reason I'm on my feet, really, is, as Mr. Fountain pointed out in the aid to cross number 20, at the fourth page in, I guess it is, in the response, part (c) recites the fact from Trans Mountain that the results of the open season are confidential.
1044.           I candidly have no current knowledge that would suggest that they remain any less confidential today, and so -- and this isn't, I think, the confidentiality we're going to be talking about in the confidential portions of the proceeding. This is more a case where Trans Mountain has invoked confidentiality in connection with their process and I'm not sure it's up to Chevron to waive it. So that's the reason for my misgivings here.
1045.           It may not be that the general terms that were filed in the Application before the Board that's found here are confidential. Clearly they're not, but the particulars of Chevron's dealings apparently are and that's a confidentiality, as I say, that's been invoked by Trans Mountain to protect the integrity of the process. And so I loathe to go down a trail that's going to cause us to breach that.
1046.           So maybe Mr. Langen can help us out by being a little more precise in terms of how far he wants to go and what he needs to get by way of that undertaking.
1047.           **MR. LANGEN:** Mr. Chairman, I'm certainly not trying to get the confidential information of Trans Mountain or of Chevron. I'm simply trying to understand and -- whether or not -- what the terms were that Chevron agreed to. And I propose to use this aid to cross-examination, as it is a Trans Mountain document that's on the public record that forms and is the expansion and firm service transportation service agreement for the TMX-2 expansion. It outlines the terms under which Chevron would have entered into a firm service commitment. And I'm simply wanting to discuss that with my friends because Chevron has put it into evidence.

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1048. I believe one of the witnesses indicated that they hadn't seen this agreement and they couldn't speak to it. And I'm simply asking for the undertaking in order to speak to them about the agreement that they've indicated in their own evidence that they entered into.
1049. So either we use this agreement to test their evidence or we use their agreement. I don't quibble either way.
1050. **MR. SANDERSON:** And that clarifies my concerns. That is -- what I'm going to suggest is this.
1051. I think Mr. Langen should ask his questions using this document. I think these witnesses will undertake or effectively take those questions subject to check. We will inquire to make sure that when we look at the document that was actually employed by Chevron, assuming we can locate it, it doesn't affect the answers they've provided. We can do that overnight if we have to.
1052. But to allow Mr. Langen to continue, I don't have any difficulty for now using this document on the assumption that it's accurate and consistent with what was actually used.
1053. **THE CHAIRMAN:** You may proceed then, Mr. Langen.
1054. **MR. LANGEN:** Thank you, Mr. Chairman.
1055. So gentlemen, I think we were looking at this aid to cross. And we'll go to the page that's titled "Expansion and Firm Service Transportation Service Agreement TMX-2 Expansion".
1056. And sorry, Madam Clerk, I'll get you to go to hard copy number 10. The page numbers are at the top centre.
1057. **MR. FOUNTAIN:** This is the page that says "Articles Tolls" at the top?
1058. **MR. LANGEN:** That is correct.
1059. **MR. FOUNTAIN:** Thank you.
1060. **MR. LANGEN:** Now, gentlemen, would you agree that, under

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paragraph 3.1, it states:

*“Notwithstanding any provision of this agreement other than Section 16.1, the parties agree that firm service tolls payable by the shipper for firm service under this agreement shall be calculated in accordance with the toll principles that are attached herein.” (As read)*

1061.           You’d agree that’s what it says there?

1062.           **MR. FOUNTAIN:** And it references Schedule B.

1063.           Everything else you said was correct.

1064.           **MR. LANGEN:** Okay.

1065.           And you would agree that in executing this agreement, clearly, the shipper and the pipeline company are agreeing to set part -- set agreed upon toll principles, as it indicates there?

1066.           There would be a fixed toll?

1067.           **MR. FOUNTAIN:** Yes, those that show up in Schedule B.

1068.           **MR. LANGEN:** Okay.

1069.           And if we can go to page number 18 hardcopy, please? Thank you, right there.

1070.           You see Article 7: “Extension, Expansions, Exit Rights and Step-up Rights.” Would you agree that as a firm shipper the -- Chevron would have received an extension right whereby it could -- and it’s in the first sentence under 7.1 -- it could extend its initial term of five years?

--- (A short pause/Courte pause)

1071.           **MR. GRAY:** So I believe when Chevron submitted the bid that was the terms of the contract, as you’ve indicated and read.

1072.           The season -- open season failed and this particular tariff was never

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- reviewed and approved by the Board and so, although the contract says there are step-up rights, I think back to the Firm 50 hearing -- similar case where there were step-up rights and those step-up rights never ended up in the final contract because they were not approved by the Board.
1073.           So, yes, they're in this document. I can grant you that.
1074.           **MR. LANGEN:** That's fair.
1075.           And I appreciate the context you're providing. I'm just -- this was -- this would have been -- had it been approved, this right would have been provided to Chevron, had the project gone ahead and had the NEB approve the tariff and the TSA as presented?
1076.           **MR. GRAY:** That's sheer speculation.
1077.           **MR. LANGEN:** That's what you signed up for though.
1078.           You would have obtained -- you signed up, as part of the deal you would have got step-up rights subject to Board approval?
1079.           **MR. GRAY:** As written in this document, subject to the Board approval and the open season receiving sufficient support, that would be the case.
1080.           **MR. LANGEN:** So let's just short circuit this.
1081.           There's extension rights identified, as we just -- I've just taken you to. If we go to page 19, you see that there are step-up rights which I think you would agree were offered in the open season.
1082.           And then if we go to page 20 there's a shipper's transfer right.
1083.           Do you agree with that?
1084.           **MR. JUDD:** So we can see it in the document here.
1085.           **MR. LANGEN:** Okay.
1086.           And that -- those rights, subject to -- and I appreciate Mr. Gray's qualification -- subject to Board approval, would have been given to Chevron had

- the project gone ahead?
1087.           **MR. JUDD:** So again, I think ---
1088.           **MR. LANGEN:** As a committed shipper?
1089.           **MR. JUDD:** I think it's asking for some speculation on our part as to what the Board would have approved.
1090.           I think the document speaks for itself as to what was proposed but we can't speak to the speculation that it would have been approved.
1091.           **MR. LANGEN:** Okay.
1092.           Can we -- can you agree that it would have been Chevron's expectation, subject to Board approval, that it would have received those rights at the time it signed up for committed capacity?
1093.           **MR. JUDD:** If the Board approved it and we'd signed up for those rights, we would expect to receive them.
1094.           **MR. LANGEN:** Would you agree that had the project gone ahead and having executed a transportation service agreement, Chevron would have been taking some risk associated with that expansion?
1095.           **MR. JUDD:** I think you're asking us to speculate numerous steps down the road here.
1096.           We don't know what would have been approved. We know what we offered and we know what was agreed to with Trans Mountain but I don't know how to quantify any risk if I don't know what's been approved prior to that risk.
1097.           **MR. LANGEN:** Okay. Let's try it on a generic level.
1098.           When open seasons are offered to pipeline shippers, similar to Chevron, those open seasons come with firm or committed capacity based on a commitment made by those shippers.
1099.           Is that correct?

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--- (A short pause/Courte pause)

1100.           **MR. JUDD:** I just want to clarify the question.

1101.           I think what you've asked me is: In an open season, one of the things that we're offered is a firm contract.

1102.           I would agree with -- that some open seasons offer a firm contract for firm capacity on a pipeline.

1103.           **MR. LANGEN:** Okay.

1104.           And when shippers sign up providing a firm commitment they take some risks; do they not?

--- (A short pause/Courte pause)

1105.           **MR. JUDD:** So I'd need you to be a little more specific about what risk are you specifically referring to?

1106.           **MR. LANGEN:** If you commit under an open season, like this one, like the TMX-2 that Chevron did commit under, you take a "take or pay" type -- typically, you take a "take or pay" type commitment.

1107.           You give a "take or pay" type commitment; correct?

1108.           **MR. JUDD:** So I would agree that with "take or pay" commitments there's a risk that, if you can't take the barrels, that you'll pay for the capacity.

1109.           **MR. LANGEN:** You'll pay for the capacity. Okay.

1110.           And, in the case of TMX-2 signing up for a five-year term, Chevron did that; correct?

1111.           **MR. JUDD:** So in -- we signed up for the terms as specified in this particular document, yes.

1112.           **MR. LANGEN:** Right.

1113.           And so you would have taken the risk, "take or pay"?

--- (A short pause/Courte pause)

1114.           **MR. JUDD:** So can you refer me to the “take or pay” portion of this that you’re referring to?

1115.           **MR. LANGEN:** If we go back to hardcopy page 10, the first sentence under “3.2”:

*“The shipper shall pay the firm service toll on a monthly basis in accordance with the rules and regulations. In the event that the volume of petroleum tendered by the shipper in respect of that month for a service option is less than the monthly volume for that service option, a shipper shall pay to the carrier the sum of the firm service toll in respect of the volume of petroleum delivered by the shipper for that month in accordance with the rules and regulations and 100 percent of the demand charge portion of the firm service toll for delivery from the applicable receipt point to the applicable delivery point.” (As read)*

1116.           **MR. JUDD:** So for firm service, which I view to be different than priority destination service, and in the specifics of this -- this particular agreement, I agree that that’s the risk that we took.

1117.           **MR. SANDERSON:** Mr. Chairman, I’m going to suggest, if I might, that these witnesses have been in this session now for an hour and 45 minutes, which I usually sort of, by my own watch, set as a limit for various needs. So I’m going to suggest a five-minute break if that accommodates you.

1118.           I don’t know what the -- what the normal practice you want to adopt is, but if we can sort of set it to an hour and a half to two hours as max, that I think is fair to the witnesses.

1119.           **THE CHAIRMAN:** Sure.

1120.           You have no objection to that.

1121.           **MR. LANGEN:** No, Mr. Chairman, but I am finished with this aid so I’m wondering if we can get an exhibit number.

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1122.           **THE CHAIRMAN:** Well, could we conclude with that document and then take a -- we'll take a five-minute break then. Thank you.

1123.           **THE REGULATORY OFFICER:** That'll be Exhibit C4-17.

--- **EXHIBIT NO./PIÈCE No. C4-17:**

*BP Canada aid to cross #20 to Chevron Canada*

1124.           **THE CHAIRMAN:** Okay, we'll take a five-minute break then and come back at ten to one and, in respect for tomorrow, we'll take two probably shorter breaks than the actually longer break we took this morning.

1125.           So we'll break until ten to one. Thank you.

--- Upon recessing at 12:42/L'audience est suspendue à 12h42

--- Upon resuming at 12:52/L'audience est reprise à 12h52

1126.           **THE CHAIRMAN:** Thank you. Proceed, Mr. Langen.

**KORY D. JUDD: Resumed**

**ERIC W. FOUNTAIN: Resumed**

**PAUL D. GRAY: Resumed**

**HAROLD YORK: Resumed**

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

1127.           **MR. LANGEN:** Gentlemen, regarding the Trans Mountain's most recent open season for expansion capacity, Chevron confirmed in its evidence -- I don't think you need to pull it up but it's at NEB IR 1.7B -- that it would consider firm service on Trans Mountain provided the service terms were known, those terms were just and reasonable and the commitment required would be less than the minimum 15 years.

1128.           Is that synopsis generally accurate?

1129.           **MR. FOUNTAIN:** That is consistent with what's in that response.

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1130.           **MR. LANGEN:** And as I understand it, Chevron had discussions with Trans Mountain during the course of the most recent open season about obtaining firm service on Trans Mountain.
1131.           Is that fair?
1132.           **MR. FOUNTAIN:** I'm sorry, could you repeat that?
1133.           **MR. LANGEN:** As I understand it, Chevron had discussions with Trans Mountain about obtaining firm service during the most recent open season?
1134.           **MR. FOUNTAIN:** That's correct.
1135.           **MR. LANGEN:** And as I understand it, Chevron approached Trans Mountain about offering shorter firm service contracts, something less than 15 years.
1136.           Is that fair?
1137.           **MR. FOUNTAIN:** That was a portion of that conversation, yes.
1138.           **MR. LANGEN:** And would you generally agree that committed shippers who make longer term commitments on expansion projects take more risk than those who make shorter term commitments?
1139.           **MR. JUDD:** I think you'd have to speak to the specific risk and I think the risks are different.
1140.           I don't know that they're greater or lesser.
1141.           **MR. LANGEN:** Okay.
1142.           Earlier, you agreed before the break that a "take or pay" commitment leads to risk for a shipper; correct?
1143.           **MR. JUDD:** So a "take or pay" agreement leads to risk for a shipper, correct.
1144.           **MR. LANGEN:** If you're a committed shipper on Trans Mountain who takes a 15-year term, you have a "take or pay" commitment that's 15 years.

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1145.            Would you agree with that -- that you'd get a 15-year commitment and after you have another shipper who takes a term that's less than 15 years, that "take or pay" commitment is less from an economic perspective?
1146.            **MR. JUDD:** I think there's definitely different duration between the two commitments.
1147.            **MR. LANGEN:** Okay.
1148.            And the amount of money that each shipper is obligated to pay over the length of the commitment is different; correct?
1149.            **MR. FOUNTAIN:** I guess the confusion that's probably on my face and maybe some of my colleagues is there are risks with every -- any decision you would make in regard to this.
1150.            And so there are clearly risks associated with not making a commitment. And in this case, clearly, you're taking -- you're accepting the risk of paying a 20 percent premium on the toll for a 20-year period. So that's a tremendous financial risk associated with not making a commitment here.
1151.            So there -- I think Mr. Judd characterized it correctly, there are different risks for different types of commitments or lack of commitment here.
1152.            **MR. LANGEN:** And you would agree that -- let's follow up on that -- you would agree, though, that an uncommitted shipper doesn't have any financial risk?
1153.            **MR. FOUNTAIN:** I'd disagree with that.
1154.            I think my statement just then showed that there's tremendous financial risk to an uncommitted shipper.
1155.            **MR. LANGEN:** Well, if they don't have a "take or pay".
1156.            **MR. FOUNTAIN:** They're going to pay a surcharge or a premium to the toll for a 20-year period that equates to billions of dollars in this case -- in Burnaby's case.

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1157. That's a significant risk.
1158. **MR. LANGEN:** But you could minimize -- but you're not on the hook. You can choose to ship or not ship.
1159. And you don't have to pay anything if you choose not to ship.
1160. **MR. FOUNTAIN:** Are you isolating it to only the "take or pay" risk?
1161. If you're saying that's the only risk ---
1162. **MR. LANGEN:** Sure.
1163. **MR. FOUNTAIN:** --- that you want us to consider ---
1164. **MR. LANGEN:** Sure.
1165. **MR. FOUNTAIN:** --- then you're right.
1166. An uncommitted shipper does not have the take or pay risk but the uncommitted shipper does have significant financial risk.
1167. **MR. LANGEN:** And would you agree that, without committed shippers, the pipeline would not be constructed?
1168. So spot shippers aren't enough to support the project, generally?
1169. **MR. FOUNTAIN:** Generally, you're right.
1170. I can't speak to the specifics of Trans Mountain's thinking though.
1171. **MR. LANGEN:** As I understand it, Chevron is of the view that the Trans Mountain expansion that's being proposed that went through the open season is needed.
1172. Thank you, Mr. Sanderson.
- (A short pause/Courte pause)
1173. **MR. LANGEN:** I just want to confirm that Trans -- sorry, Chevron is

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of the view that the expansion that Trans Mountain went through the open season for in 2012 is required, in its view.

--- (A short pause/Courte pause)

1174.           **MR. FOUNTAIN:** We believe that the Alberta crude market needs access to the Pacific Coast as an outlet for that crude.

1175.           The Trans Mountain expansion is one of those alternatives. But definitely we believe that expansion of pipeline's capacity to take those crude -- those crude resources and get them to markets that can use them is an objective.

1176.           **MR. LANGEN:** And Dr. York, as I understand your originally filed evidence, you forecast that, generally, a discount in the range of \$15 to \$30 as between light crude in Edmonton and Brent crude will persist until past 2020.

1177.           Is that a fair summary?

1178.           **DR. YORK:** That's a fair assessment.

1179.           **MR. LANGEN:** And in your updated evidence, you've indicated that the -- you've updated your forecast and the discount is now shown in that evidence between \$20 to \$25.

1180.           Is that fair?

1181.           **DR. YORK:** That's correct.

1182.           **MR. LANGEN:** Is it fair to say that the Brent crude differential you forecast is a good proxy as between the cost of light crude oil in Edmonton and the waterborne cost of crude on the West Coast?

1183.           **DR. YORK:** It's a proxy that's fair toward -- to reflect the market dynamics.

1184.           **MR. LANGEN:** And, Dr. York, I under -- I would assume that you're familiar with the Westridge dock bidding mechanism for spot capacity?

1185.           **DR. YORK:** I have some limited familiarity with it.

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1186.           **MR. LANGEN:** Does it make sense that, if there's a differential between Edmonton and the waterborne price on the West Coast where the Westridge dock is, that the premium that is paid on the Westridge dock for that capacity is approximately equal to the differential?

--- (A short pause/Courte pause)

1187.           **DR. YORK:** Certainly, in the case of a pure monopoly that would be true.

1188.           In a competitive market it could be the case as well.

1189.           **MR. LANGEN:** The forecast in your evidence goes out to 2020. Is it safe to assume that, at this point in time -- that is in 2020 -- sorry. Is it safe to assume that that differential is going to continue past 2020?

1190.           **DR. YORK:** That's part -- that's Wood Mackenzie's view is that extend beyond 2020.

1191.           **MR. LANGEN:** You can tell me how far beyond 2020?

1192.           **DR. YORK:** Our assessment ends sort of in the 2025 to 2030 range and we're still -- and we still have a wide differential.

1193.           **MR. LANGEN:** Now, as I understand how you prepared your forecast, you considered planned, proposed and rumoured pipeline projects.

1194.           Is that right?

1195.           **DR. YORK:** We've tried to incorporate and assess every publicly available project that we know of.

1196.           **MR. LANGEN:** Okay.

1197.           And maybe I'm not being clear. I'm using your terms and if we want to pull up your evidence that's fine but you've considered planned, proposed and rumoured pipeline projects.

1198.           Is that ---

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1199.           **DR. YORK:** That's correct.
1200.           **MR. LANGEN:** Okay.
1201.           And, in doing so, you've generally categorized those projects into firm, less firm and uncertain?
1202.           **DR. YORK:** That's correct.
1203.           **MR. LANGEN:** And as I understand your forecast, you considered that one of the Canadian West Coast projects -- that being either Northern Gateway or the Trans Mountain expansion -- would go ahead but not both?
1204.           **DR. YORK:** Not within the 2020 timeframe.
1205.           **MR. LANGEN:** Okay.
1206.           And I take it that that assumption would carry on with the further years that you've indicated, the 2030 and beyond that you indicated earlier for the differential?
1207.           **DR. YORK:** No, our outlook is that there is one West Coast pipeline by 2020 and there's a subsequent West Coast pipeline beyond 2020.
1208.           **MR. LANGEN:** Okay.
1209.           **DR. YORK:** But we don't make a call as to which pipeline comes first.
1210.           **MR. LANGEN:** That's fair.
1211.           And just to be clear and maybe you've already said this but so your forecast to 2020 assumes one of those pipelines will be constructed?
1212.           **DR. YORK:** That's correct.
1213.           **MR. LANGEN:** So, Gentlemen, as I understand Chevron's evidence, when the Board is to consider what an economic alternative source is for the purposes of adjudicating on a PDD for Chevron, the Board should consider the relative price of the Trans Mountain toll to the relative price of other

- transportation options.
1214. Is that your position?
1215. **MR. FOUNTAIN:** Yes.
1216. And let me, if I could, provide just a few things that we think the Board needs to consider in that evaluation.
1217. So your characterization that it's cost relative to Trans Mountain Pipeline is consistent with our view. So four things we think that the Board ought to consider: one is the alternative economic relative to supply via Trans Mountain, as you just indicated.
1218. Second: Was the alternative developed with the intent of economic benefit relative to Trans Mountain Pipeline?
1219. And as I mentioned earlier today, others' alternatives were constructed with the intent of accessing crude or supply chains that they viewed as superior to Trans Mountain, with an expectation for economic return as compared against Trans Mountain but contrast that against Burnaby where the alternatives were clearly more expensive for the same mode of transport, for the same crudes.
1220. The third item that the Board should consider is: What if, over time, the alternative is likely to go through periods where it produces both positive and negative margins?
1221. So if you have a secondary -- let's use the rail or truck alternatives where they're clearly more expensive than the pipe, they may be economic for one period of time but then they go into another period of time where the discount's not as great and they're clearly not economic.
1222. And now, all of a sudden, the location cannot receive an economic supply that even allows it to run profitably.
1223. Fourthly: To what extent should the community's interest be considered?
1224. So when we start thinking about what's economical, what's economic for Burnaby -- the community of Burnaby?

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1225.                   And so those are things that we think the Board should consider. We've got some rationale behind that. We can talk about it later.
1226.                   **MR. LANGEN:** Let's park the first one because I think we have agreement on that.
1227.                   Can you tell me where in your evidence the other three show up?
- (A short pause/Courte pause)
1228.                   **MR. FOUNTAIN:** When I consider number two -- I consider number two a further explanation of number one because it's an explanation of why there's a differential between the alternatives that have been developed for Burnaby, post-apportionment, relative to the investments that were made in alternative supplies for our competitors in periods of non-apportionment.
1229.                   And so I think that's the same answer. It's not economic relative to Trans Mountain Pipeline and I think that holds for both cases.
1230.                   **MR. LANGEN:** So again, we're back at the economic supplies of your competitors. We're supposed to consider that?
1231.                   **MR. FOUNTAIN:** Yes.
1232.                   **MR. LANGEN:** But we're not supposed to consider refinery economics?
1233.                   **MR. FOUNTAIN:** No.
1234.                   **MR. LANGEN:** So that was ---
1235.                   **MR. FOUNTAIN:** And there's a rationale behind that; right?
1236.                   I mean, the rationale is that this Board -- first of all, the Trans Mountain tariff speaks to the source of supply or the economic -- the route of supply, not the refining profitability of that supply.
1237.                   And then, second of all, if you look at the jurisdiction of the Board, the Board regulates the pipelines. The Board doesn't regulate the refineries and so it

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- really does get down to the economics of the supply sources.
1238.           **MR. LANGEN:** So can you tell me where in your evidence the third item is?
1239.           **MR. FOUNTAIN:** I don't think I can find a spot where that was exhibited in the evidence.
1240.           **MR. LANGEN:** And can you tell me where in your evidence the fourth item is?
1241.           **MR. JUDD:** So I think in the opening statement that I made today, we spoke about our strong relationship in the community, strong relationship in the province and how we see the long history of the Burnaby refinery working in those communities as a very important aspect of how we do our business.
1242.           **MR. LANGEN:** I just want to -- because there seems to be a bit of a moving ---
1243.           **MR. JUDD:** Excuse me, to your question on three, I think in our confidential evidence, which we won't speak to now, there's data that's provided that would speak to the alternative periods.
1244.           **MR. LANGEN:** You would agree though that that data doesn't articulate what Mr. Fountain articulated a few minutes ago?
1245.           **MR. JUDD:** No, I don't know that I would necessarily agree with that statement.
1246.           **MR. LANGEN:** Okay.
1247.           Well, maybe perhaps we'll discuss that in an in-camera session.
1248.           **DR. YORK:** And if I could add, we do address the externalities around Burnaby in the reply evidence, Part 2, page 5 of 5, answer 7.
1249.           **MR. LANGEN:** Mr. Fountain, what I found interesting in your response is -- we'll leave that for argument.
1250.           Now, as I understand it, the current published light crude oil toll on

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Trans Mountain from Edmonton to Burnaby is over \$16 per cubic metre.

1251. Is that approximate?

1252. **MR. GRAY:** Two-seventy one (271) a barrel?

1253. **MR. LANGEN:** Maybe -- perhaps we can do it this way. Ms. Butler, if we can pull up Exhibit A-27. It's the tariff, please.

1254. **THE REGULATORY OFFICER:** Are you talking about the tariff that NEB filed -- okay.

1255. **MR. LANGEN:** And I note this morning you gave an exhibit number to it. I don't know whether it's just the rules and regulations you provided an exhibit to or whether you provided an exhibit to the tolls which are a separate document, Tariff 87.

1256. **THE REGULATORY OFFICER:** It's just the rules.

1257. **MR. LANGEN:** It's the rules, okay. And I'm not trying to be difficult here, I just want -- I want to talk, if we can, in cubic metres, and I realize you want to talk in barrels.

--- (Laughter/Rires)

1258. **MR. LANGEN:** And we can agree but that probably won't be quick on our feet, but 6.3 barrels in a cubic metre -- let me -- let's do it this way, if we can pull up Exhibit B-07c please, and if we can go to Adobe page 8, please.

1259. Okay, gentlemen, you'll see here that this is a table that outlines crack margins, but I'm focused on the fourth column, it says "TMPL Tariff", and you'll see there that it's in -- it's expressed in the units of Canadian dollars per cubic metre. Do you agree with that?

1260. **MR. GRAY:** Yeah, I believe that has the surcredit already applied to it.

1261. **MR. LANGEN:** Okay. And that's -- thank you, Mr. Gray. And that's what I want to talk to you about. When you're saying that what's economic -- the yardstick for what's economic with respect to your application its

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- transportation on Trans Mountain. And is it -- sorry -- it's transportation on Trans Mountain, it's the toll.
1262.           And what I want to understand is, is it the posted toll that's published in the tariff or is the toll that includes the surcharge back from the ---
1263.           **MR. GRAY:** The posted toll.
1264.           **MR. LANGEN:** It's a posted toll?
1265.           **MR. GRAY:** We've done -- all of our evidence is based on the \$2.74 or whatever it works out to, prior to the surcredit -- the application of the surcredit. I believe in calculating the exhibit that you brought up -- or sorry, in the exhibit that you brought up, that document, because it was calculating a crack spread for Vancouver, used the toll with the addition of the surcredit because that's what all of the -- anybody that's shipping on the pipeline currently would be afforded.
1266.           **MR. LANGEN:** Okay. And that's -- you know more about this than I do. I just want to be clear. The relative measure is the posted toll published in the tariff and not the one that is decreased as a result of the bid premiums paid on the Westridge dock; is that correct?
1267.           **MR. GRAY:** Correct.
1268.           **MR. LANGEN:** Now, gentlemen, we had this discussion earlier, and you indicated that the reason that Chevron didn't sign up for expansion capacity on the most recent Trans Mountain expansion was for a number of -- a couple of reasons, but one of which was that you didn't think the tolls were just and reasonable; is that fair?
1269.           **MR. FOUNTAIN:** That's one of a couple of them. If you'd like for me to I'd be happy to give you a couple of ideas here that I think kind of fit into why -- the rationale of why we did not commit to firm service.
1270.           **MR. LANGEN:** I just want to ---
1271.           **MR. FOUNTAIN:** And that's clearly one of them ---
1272.           **MR. LANGEN:** Okay.

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1273.           **MR. FOUNTAIN:** --- but not the only one.
1274.           **MR. LANGEN:** That's fine. I acknowledge the fact that you may have other views, and you've indicated that in the last response, I just wanted to confirm it's -- the tolls were just not just and reasonable and there are other reasons.
1275.           And having had discussions with Trans Mountain in the course of the open seasons, you're familiar with what those indicative tolls would have been or as they were provided to the Board in that hearing?
1276.           **MR. GRAY:** Yes, we are aware of the proposed tolling and methodology.
1277.           **MR. LANGEN:** And so would you agree that -- and I'm happy to take this subject to check -- that those indicative tolls for a 15-year term, a light crude oil, Edmonton to Vancouver were \$4.67 per barrel?
1278.           **MR. GRAY:** For the 15-year term, did you say?
1279.           **MR. LANGEN:** Yes.
1280.           **MR. GRAY:** Yes.
1281.           **MR. LANGEN:** And that works out to -- and you can check my math, but about \$29.41 per cubic metre?
1282.           **MR. GRAY:** Okay.
1283.           **MR. LANGEN:** And as I understand it, uncommitted -- and I think you referred to this earlier -- potentially you, Mr. Gray, but it might have been someone else -- that uncommitted or spot shippers would pay a 10 percent premium on that indicative toll; is that right?
1284.           **MR. GRAY:** Yes.
1285.           **MR. LANGEN:** So what I'm trying to understand is would you agree that if the current toll is \$16, and that's the yardstick that's economic for the Burnaby refinery, do you think that a spot toll that's in excess of \$30 would be

- economic?
1286.           **MR. FOUNTAIN:** You're making the assumption that the decision to not commit to firm service was an economic decision. At least that's my interpretation of the question.
1287.           **MR. LANGEN:** It's not my interpretation, but let me try it again. You're saying that this Board in considering this application should consider approximately a posted toll on Trans Mountain, which is approximately \$16, as being the economic yardstick. And what I'm trying to understand is whether you think a future toll that's in excess of \$30 per cubic metre would be considered economic.
1288.           **MR. JUDD:** So it's difficult for us to consider that future toll in reference to the pipeline if the uncertainty of getting to that toll is our biggest concern. So our issue is a fairly lengthy period of time between expansion and our current apportionment, which is already limiting the refinery, and so it's very hard for us to consider the economics of a future event that is uncertain and related to our current tolls with a fairly lengthy gap in the middle where we're not sure that we'll get supply.
1289.           **MR. LANGEN:** And if the toll were \$30 today would it be economic? It would be the yardstick, would it not?
1290.           **MR. JUDD:** So if the toll were the toll on the pipeline today we should be comparing against the toll of the pipeline for today.
1291.           **MR. LANGEN:** Mr. Chairman, I note the time, it's 20 after one, and I'm at a logical point to break, if we can.
1292.           **MR. SANDERSON:** Mr. Chairman, if I might, can we just canvass maybe Mr. Langen in terms of timing before we break, just in terms of how long -- how much longer he expects to be with this panel in the public portion, and then I guess maybe, if he wants to, how long he might be with the confidential portion when we get there just so we can assess where we are on the schedule.
1293.           **THE CHAIRMAN:** And that probably could apply to all. And if you wish to offer that now that would be helpful, that we would help, but if not, you can consult with Board counsel at the end of each day to see where we are. Whatever is helpful to your ---

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1294.           **MR. LANGEN:** I think it -- sorry, Mr. Chairman. I think it would be helpful for those in the room clearly with respect to where -- where BP is at.

1295.           **THE CHAIRMAN:** Thank you.

1296.           **MR. LANGEN:** So I can tell you that on the -- on the public session I am basically two-thirds the way through my cross.

1297.           With respect to the in camera sessions, this is subject to change because I have yet to review the evidence that was filed on Friday by Chevron. So that may change, but I suspect I'll be less than 30 minutes.

1298.           **THE CHAIRMAN:** Okay.

1299.           **MR. LANGEN:** Less than 30.

1300.           **THE CHAIRMAN:** Thank you. That's helpful then to everybody.

1301.           With that then we'll adjourn for the day and reconvene at 8:30 tomorrow morning.

1302.           Thank you.

--- Upon adjourning at 1:22 p.m./L'audience est ajournée à 13h22