LETTER DECISION

File OF-Tolls-Group1-T260-2016-02
18 April 2017

To: Attached Distribution List

Trans Mountain Pipeline ULC (Trans Mountain)
Complaint by U.S. Oil & Refining Co. (U.S. Oil) Respecting the Allocation of Capacity Among Uncommitted Shippers Nominating to Barges

On 11 October 2016, U.S. Oil filed a complaint, pursuant to Parts I and IV of the *National Energy Board Act* (NEB Act), regarding the procedure being used by Trans Mountain to allocate capacity among uncommitted shippers nominating to barges at the Westridge Dock (the Complaint).

The Complaint requested that the National Energy Board (Board):

i) investigate the procedure being used by Trans Mountain to allocate capacity among uncommitted shippers nominating to barges at the Westridge Dock;
ii) require Trans Mountain to produce information respecting the nominations and bid prices that have been submitted by uncommitted shippers and the capacity allocations that have been made by Trans Mountain, subject to such confidentiality protection as the Board deems appropriate; and
iii) require Trans Mountain to address what U.S. Oil viewed as the inequity and unjust discrimination among shippers respecting the capacity allocation procedure being used by Trans Mountain in the barge subcategory.

By letter dated 19 October 2016, the Board invited comments from interested persons on the Complaint. The Board stated that after reviewing the comments, it may issue its ruling on the matter or have further process to deal with the Complaint. Comments were received from Shell Trading Canada (STC), Chevron Canada Limited (Chevron), and Trans Mountain. The Board established additional written process to hear the Complaint through a letter dated 16 December 2016.

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Views of U.S. Oil

Current Capacity Allocation Procedure

In U.S. Oil's view, the current procedure being used to allocate capacity among uncommitted shippers nominating to barges on the Trans Mountain pipeline system is inequitable and unjustly discriminates against shippers with smaller barges.

U.S. Oil confirmed that the monthly capacity allocated to the barge subcategory in Rule 14.3 of Trans Mountain's current tariff is approximately 160,000 barrels. The company indicated that it uses its Drakes Bay barge, which has a capacity of 85,000 barrels, to transport crude oil from the Westridge Dock, whereas other shippers, such as STC, are using barges with capacities greater than 160,000 barrels.

As part of the capacity allocation procedure within the barge subcategory, Trans Mountain does not allow an uncommitted shipper to submit a nomination for a volume in excess of the crude oil cargo capacity of its barge. As a result, if U.S. Oil wishes to transport 160,000 barrels in a month using its 85,000 barrel barge, it is required to submit two separate nominations. In contrast, a shipper using a barge with a capacity of 160,000 barrels can submit one nomination.

Trans Mountain ranks uncommitted shippers' individual nominations in the barge subcategory on the basis of bid premium, which is calculated by multiplying the bid price by the vessel volume nominated. U.S. Oil explained that in the case of two shippers wishing to transport 160,000 barrels in a month – one with an 80,000 barrel barge and the other with a 160,000 barrel barge – the bid premium methodology would require the shipper with the 80,000 barrel barge to offer a bid price more than twice that offered by the shipper with the 160,000 barrel barge in order to be allocated capacity. In this regard, U.S. Oil asserted that the allocation procedure disadvantages shippers using small barges, and therefore does not afford U.S. Oil a fair opportunity to acquire capacity in the barge subcategory. U.S. Oil argued that the bid premium allocation methodology does not award capacity to the shipper that is prepared to pay the most for it.

History of Tariff Amendments

U.S. Oil asserted that the barge subcategory was not intended for vessels nominating in lot sizes greater than 80,000 barrels. It explained that in a decision dated 16 August 2007, the Board approved the use of a bid premium methodology rather than a bid price methodology in allocating uncommitted capacity at the Westridge Dock, as well as a new destination category for barge traffic. The barge subcategory was allocated a capacity of 2,700 barrels per day (bpd) to guarantee one cargo per month (approximately 80,000 barrels). U.S. Oil observed that the Board's approvals were reflected in Trans Mountain's Tariff No. 69, which defined "barges" by volumes nominated in lot sizes less than or equal to 80,000 barrels.

Trans Mountain Tariff No. 76, filed after the issuance of the Board's RH-4-2008 Reasons for Decision, increased the allocation to the barge subcategory from 2,700 bpd to 5,370 bpd (approximately 160,000 barrels for a month). However, U.S. Oil noted that Tariff No. 76 continued to define the term "barges" as volumes nominated in lot sizes less than or equal to

80,000 barrels. In Tariff No. 84, filed and approved in 2010, Trans Mountain introduced a non volume-based definition of “barge”, but retained the 80,000 barrel lot size nomination limit.

In the RH-2-2011 proceeding, Trans Mountain proposed certain changes to its tariff that were required to implement firm service to the Westridge Dock. These changes included the deletion of the lot size nomination limit for barges in Rule 14.3 of the tariff. The changes were reflected in Tariff No. 86, which was approved by the Board.

U.S. Oil argued the deletion of the lot size nomination limit was not related to the implementation of firm service to the Westridge Dock. It explained that the allocation of capacity within the barge subcategory was not in issue in the RH-2-2011 proceeding, and therefore the company was not aware that a consequence of the tariff amendments would be to permit a large barge to submit a single nomination for all of the uncommitted capacity in the barge subcategory. U.S. Oil argued that in proposing to delete the nomination limit in RH-2-2011, Trans Mountain should have addressed, among other things: (i) whether it was appropriate to open up the barge subcategory to larger barges; and (ii) if so, what measures were necessary to ensure equity in allocating barge capacity among smaller and larger barges. Further, U.S. Oil argued that Trans Mountain’s discussions with shippers prior to the RH-2-2011 proceeding should not be used to excuse its failure to set out, in its RH-2-2011 filing, the rationale and impacts of removing the nomination limit on barges from Rule 14.3 of the tariff.

U.S. Oil’s Proposals

U.S. Oil put forward three proposals to address what it viewed as the unfairness and inequity in the tariff’s current capacity allocation procedure. According to U.S. Oil, the choice between the proposals should have regard for which option would be most appropriate from an economic and allocative efficiency perspective.

U.S. Oil’s first proposal would reinstate the barge nomination limit in Rule 14.3 of Trans Mountain’s tariff. In other words, the single nomination of an uncommitted shipper with a barge would be limited to 80,000 barrels. Under this option, all shippers would need to submit at least two separate nominations in order to transport 160,000 barrels of barge capacity in a month.

U.S. Oil said that reinstatement of the 80,000 barrel nomination limit would not create inefficiencies in the capacity allocation process. U.S. Oil expected that, absent special circumstances such as refinery turnaround, it and STC would each submit two separate monthly nominations for 80,000 barrels, and that capacity would be allocated to those two nominations among the four with the highest bid prices. The approximately 160,000 barrels of capacity in the barge subcategory would therefore be fully utilized.

U.S. Oil’s second proposal would allow a shipper to submit a single nomination for a volume in excess of the crude oil capacity of its barge and then transport the volume in more than one loading window. This would allow shippers using larger barges to continue submitting a single nomination for the approximately 160,000 barrels of capacity in the barge subcategory, but it would also allow U.S. Oil and shippers using smaller barges to submit a single nomination for

this capacity. U.S. Oil argued this would level the competitive playing field by awarding the full capacity to the competitor that is prepared to pay the most for it.

In response to STC's assertion that it is less efficient to load and transport crude oil on two small barges than on one large barge, U.S. Oil contended that its barge only takes eight to ten hours to load and has transported uncommitted volumes from the Westridge Dock in two voyages per month many times over the past eight years. According to U.S. Oil, this has never posed a problem to the efficient operation of the Westridge Dock. U.S. Oil also argued that it would like to use the entire allocation of barge capacity at its refinery each month, and has no interest in selling any barge capacity that it acquires to one of its competitors.

U.S. Oil's third proposal would allocate capacity within the barge subcategory based on bid price rather than bid premium, such that U.S. Oil would not need to offer a bid price at least twice that offered by STC in order to be allocated barge capacity. In U.S. Oil's view, all uncommitted barge shippers would want to secure the entire 160,000 barrels of capacity in the barge subcategory each month, and therefore there is no reason to expect that one barge would leave insufficient capacity for another barge to economically use. According to U.S. Oil, these circumstances are much different than those addressed by the Board in its 16 August 2007 Decision, in which the Board approved the use of the bid premium methodology.

U.S. Oil submitted that the Board should direct Trans Mountain to file, for Board approval, a revised methodology for allocating capacity within the barge subcategory. U.S. Oil agreed with Chevron that Trans Mountain should be required to submit a draft tariff to reflect any ruling made by the Board in this proceeding, and that interested parties should be given an opportunity to comment on the draft tariff.

Views of Chevron

It was Chevron's view that the Complaint raised a narrow and discrete issue regarding whether Trans Mountain should allow nominations for lot sizes greater than 80,000 barrels from uncommitted shippers with barges capable of carrying such volume in one loading window. To the extent that the proceeding addressed only this narrow and discrete issue, Chevron took no position.

Chevron submitted that if the Board were to direct any change in the status quo, Trans Mountain should be required to submit a draft tariff that reflects the Board's ruling. Interested parties should then be given the opportunity to comment on this draft tariff.

Views of STC

STC identified itself as an uncommitted shipper under Trans Mountain's tariff. An affiliate of STC chartered a barge with a capacity of approximately 170,000 barrels and relocated this barge to the west coast of Canada and the United States in 2015. STC sub-charters this barge for use in connection with its bids at the Westridge Dock.

STC argued that reinstating the 80,000 barrel nomination limit within the barge subcategory would be an unjust remedy because it would: (i) reverse a tariff provision that was enacted without opposition in January 2012; and (ii) penalize shippers who have chartered barges with

capacities in excess of 80,000 barrels by forcing these shippers to, among other things, terminate their charters for these barges, find alternative employment for these barges, or continue to utilize only a portion of their barge's capacity. Each case, STC explained, would have potential financial consequences to the shipper.

On the first point, STC stated that the tariff nomination process has been in effect for almost five years, and an opportunity was provided to protest the nomination process prior to it taking effect. STC observed that, subsequent to the issuance of the Board's RH-2-2011 Reasons for Decision, Trans Mountain filed a letter with the Board on 20 December 2011 attaching a copy of the revised Tariff No. 86. The letter indicated that Rules 14.2 through 14.7 of the tariff had been changed, and all comments regarding the proposed changes were to be submitted to the Board by 6 January 2012. STC argued that U.S. Oil had the same opportunity as all other shippers to provide comments on the revised Tariff No. 86. Further, STC noted that the current tariff (Tariff No. 95) employs the same definitions and the same barge capacity allocation procedure. Therefore, in STC's view, U.S. Oil had time in the intervening years to protest the barge capacity allocation procedure, but only did so once it faced competition for barge capacity.

On the second point, STC argued that none of the information in this proceeding demonstrates an unfair or inequitable allocation of capacity in the barge subcategory. STC observed that U.S. Oil's barge has a capacity of 85,000 barrels, and that larger capacity barges are available for use. STC acknowledged that the use of a smaller barge would require U.S. Oil to offer a per unit payment which is at least double the payment offered by one of its competitors using a larger barge; however, STC asserted that this is how the bid premium methodology for allocating capacity is intended to work.

STC explained that Trans Mountain's tariff has permitted shippers to nominate barges with larger capacities since January 2012, and STC determined that its ability to compete for the barrels available at the Westridge Dock justifies its commitment to a larger barge. In STC's view, forcing STC and other competitors to use smaller barges because U.S. Oil chooses to use a smaller barge undermines the foundation on which economic competition and decisions are based. STC argued that it would be unjust, unfair and inefficient to penalize STC and any other potential shipper for acquiring barges with capacities greater than that of the barge used by U.S. Oil. STC asserted that there is no claim of any physical limitation on U.S. Oil's ability to receive a barge of larger capacity at its refinery, and STC was unaware of any prohibition or regulation that would prevent U.S. Oil from chartering a barge with a larger capacity.

Further, STC explained that if Trans Mountain was directed to reinstate the 80,000 barrel nomination limit within the barge subcategory, the shipper of a 160,000 barrel barge would be forced to either submit two nominations to fill the barge or submit one nomination and factor in the dead freight when determining the bid price. In either case, the shipper would have to assume the most conservative scenario, where the 160,000 barrel barge would be only half utilized. Because the shipper would have to factor in the dead freight, STC asserted that the shipper's bid price would be less competitive.

Finally, STC did not find merit in U.S. Oil's alternative proposals regarding the capacity allocation procedure for the barge subcategory. Regarding U.S. Oil's proposal to allow a barge shipper to submit a single nomination for a volume exceeding its barge capacity, STC was

concerned that changing the nomination process in this manner may lead to a discussion to also change the methodology in the tanker subcategory. According to STC, Trans Mountain and industry have put significant effort into establishing the current rules, and little has changed that would warrant a need for change. In addition, STC maintained that it is more efficient to load and transport crude on one large barge than on two smaller barges for both Trans Mountain, as the operator of the loading terminal, and the shipper. In STC's view, Westridge Dock capacity and Trans Mountain mainline capacity are valuable commodities, and therefore economies of scale should be exercised in order to maximize the value for the entire industry.

With respect to U.S. Oil's proposal to allocate capacity based on bid price rather than bid premium, STC submitted that this could result in an inefficient allocation of Westridge Dock capacity since some of this capacity could go unused. STC provided an example, describing a month when only one 80,000 barrel barge and one 160,000 barrel barge are nominated, and the 80,000 barrel barge submits a higher bid price. STC asserted that the shipper of the 160,000 barrel barge may decline the partial volume because the per unit cost of the barge after considering the dead freight may make the barge movement less economical than other alternatives. STC also had concerns that this option may lead to a discussion to change the allocation methodology in the tanker subcategory.

Views of Trans Mountain

Current Capacity Allocation Procedure

Trans Mountain requested that U.S. Oil's Complaint be dismissed. In Trans Mountain's view, the current methodology used in allocating capacity among uncommitted barge shippers at the Westridge Dock is just and reasonable and not unjustly discriminatory. Further, Trans Mountain argued that it allows market forces to achieve efficient outcomes.

According to Trans Mountain, the separation of the barge subcategory from the tanker subcategory is necessary in order to avoid inefficiencies at the Westridge Dock, as the vessel characteristics of a barge are distinctively different from a tanker. However, Trans Mountain noted that the method used for the allocation of capacity among vessels within each subcategory is consistently applied, and therefore the allocation procedure within the barge subcategory is fair and equitable and does not have the potential for undue discrimination against smaller vessels.

Trans Mountain observed that neither the barge subcategory nor the tanker subcategory prescribe the size of the vessels that may call at the Westridge Dock within their respective subcategory. In Trans Mountain's view, the "less prescriptive" requirements provide a more efficient allocation of capacity within the confines of each subcategory in order to encourage optimal use of the Westridge Dock facilities. Trans Mountain expected that these less prescriptive requirements, having been in place since 2012, have also allowed markets to develop and mature within each vessel subcategory.

In Trans Mountain's view, no one shipper has any acquired rights in the barge subcategory, and the fact that there are now different-sized barges competing is not a basis upon which to find the tariff inconsistent with the NEB Act. Trans Mountain argued that there is no evidence on the record that U.S. Oil could not acquire, or otherwise utilize, a barge that has a capacity greater

than 85,000 barrels in order to nominate and transport volumes from the Westridge Dock. Further, Trans Mountain argued the fact that barges with different capacities call on the Westridge Dock demonstrates the effectiveness of the bid premium in achieving allocative efficiency within the subcategory. Trans Mountain described the benefit of using the bid premium methodology as revealing shippers' willingness to pay for the available capacity, either through upfront investment in a bigger barge, or a higher bid price, to ensure allocation of the scarce capacity to the highest valued use.

Trans Mountain indicated that it has no information to predict whether any additional shippers plan to use the barge subcategory in the short to medium term. Three other barges besides U.S. Oil's Drakes Bay barge have transported volumes nominated in the barge subcategory since the beginning of 2012. In 2016, two other barges besides U.S. Oil's Drakes Bay barge transported volumes nominated in the barge subcategory.

History of Tariff Amendments

In response to U.S. Oil's assertions that it failed to set out in its RH-2-2011 application the rationale and impacts of removing the nomination limit on barges from Rule 14.3 of the tariff, Trans Mountain indicated that it consulted with several shippers in 2010 regarding the introduction of firm capacity at the Westridge Dock. It was through these discussions that the sole barge shipper raised two concerns regarding the barge subcategory. According to Trans Mountain, it was in direct response to these concerns that Trans Mountain proposed revisions to its tariff, including an amendment to remove the 80,000 barrel nomination limit on barges. Given that the shipper who made the request was the only participant in the barge subcategory, Trans Mountain did not anticipate any impact to shippers in removing the nomination limit.

Following the consultation with shippers, Trans Mountain filed its application for firm service at the Westridge Dock, which was addressed in the RH-2-2011 proceeding. Trans Mountain indicated that a blackline copy of the tariff was attached to this application, which highlighted that one of the proposed tariff amendments was the deletion of the nomination limit in Rule 14.3. According to Trans Mountain, all parties to the RH-2-2011 proceeding, including U.S. Oil, were provided opportunities to ask questions and to comment or raise any concerns prior to Board approval. Trans Mountain also indicated that on 20 December 2011, it filed Tariff No. 86 in compliance with the Board's RH-2-2011 Reasons for Decision. The submission invited interested parties to comment on the proposed tariff amendments. On 11 January 2012, U.S. Oil through its counsel made a written submission to the Board stating that it agreed with the submissions made by Trans Mountain.

On this basis, Trans Mountain argued that shippers were provided a fair opportunity to raise concerns prior to, during and subsequent to the Board's issuance of the RH-2-2011 Reasons for Decision, and prior to the Board issuing its approval of the amendments to the tariff.

Response to U.S. Oil's Proposals

In addressing U.S. Oil's proposals, Trans Mountain submitted that there is no basis upon which to reinstate the 80,000 barrel barge nomination limit. Trans Mountain argued that limiting the

single nomination of an uncommitted barge shipper to 80,000 barrels would be contrary to the intent of the bid premium allocation methodology. Further, shippers with barges greater than 80,000 barrels may either: (i) limit their nomination to 80,000 barrels, creating inefficiencies for both Trans Mountain and the shipper; or (ii) back out of the bid process altogether, potentially leaving unutilized capacity in the barge subcategory.

In addition, Trans Mountain argued that a nomination limit of 80,000 barrels would be discriminatory against shippers that nominate to barges with capacities that exceed this volume. In Trans Mountain’s view, establishing any nomination limit would be discriminatory because it would favour shippers that nominate to barges with capacities that are similar to that limit.

Trans Mountain was also opposed to U.S. Oil’s alternative proposals. According to Trans Mountain, allowing a barge shipper to submit a single nomination for a volume exceeding its barge capacity would be in breach of Trans Mountain's tariff requirements and would result in inconsistent principles being applied between the barge and tanker subcategories. Further, Trans Mountain was of the view that this option would defeat the purpose of using the bid premium methodology to allocate capacity among barge shippers. Trans Mountain argued that if a shipper could nominate any theoretical volume, there would have been no benefit for the Board to approve the creation of a barge subcategory. Rather than nominating a bid price four times higher than that of a tanker shipper in order to have its barge ranked in priority, the barge shipper could simply have submitted a single nomination for a volume in excess of its barge capacity. This result, in Trans Mountain’s view, would run contrary to the concept of the bid premium that was approved by the Board.

Similarly, Trans Mountain described a scenario in which a 40,000 barrel barge called upon the Westridge Dock for capacity in the barge subcategory. Under U.S. Oil's proposal, the shipper would be permitted to nominate for the entire 160,000 barrels of capacity, and then be permitted to transport the volume in four (or more) loading windows. Trans Mountain argued that such a result is not in the best interests of shippers and would not be economically or allocatively efficient.

Trans Mountain also contended that allowing a shipper to nominate a volume greater than the capacity of its barge could facilitate shippers locking up capacity for the purpose of profiting from the nomination process. For example, Trans Mountain explained that a shipper could sell to another shipper the capacity it had been able to secure above the capacity of its barge, rather than utilize the capacity itself. In Trans Mountain’s view, this outcome is not efficient for Trans Mountain or its shippers.

While Trans Mountain was of the view that allocating capacity within the barge subcategory based on bid price provides an orderly ranking of nominations, Trans Mountain contended that a smaller vessel could outbid a larger vessel, resulting in an inefficient allocation of Westridge Dock capacity within the barge subcategory. More specifically, Trans Mountain argued that this could increase the potential for unused capacity at the Westridge Dock. Trans Mountain also argued that returning to a bid price methodology would be contrary to the findings of the Board in its 16 August 2007 decision, wherein it approved the bid premium methodology as being more economically and allocatively efficient than continuing with the bid price methodology.

In its written argument, Trans Mountain observed that U.S. Oil had proposed three options to address its Complaint but had not advocated for any particular changes to the tariff. Trans Mountain argued that, should the Board find the current capacity allocation procedure to be contrary to the requirements of the NEB Act, the record in this proceeding is inadequate for the Board to direct what changes should be made to the tariff. Trans Mountain submitted that it should be open for the Board, shippers and Trans Mountain to consider and assess the three options proposed by U.S. Oil, and to identify whether there are other options. In this regard, Trans Mountain argued that the proceeding did not provide an opportunity for Trans Mountain to file "evidence", and that its submissions were made having regard only to what U.S. Oil had requested in its Complaint.

Views of the Board

The Board has decided that Trans Mountain's tariff requires amendments to the capacity allocation procedure used in the barge subcategory.

The evidence on the record of this proceeding strongly suggests that the demand for capacity in the barge subcategory exceeds the supply available. Similarly, recent Board decisions have highlighted the chronic apportionment issues on the Trans Mountain pipeline system.[1] In these circumstances, two key objectives of economic regulation are: (i) allocating pipeline capacity or services to those who value them most; and (ii) encouraging full use of all capacity available in all destination categories.

Currently, Trans Mountain uses a bid premium methodology to allocate uncommitted capacity among barge shippers at the Westridge Dock. The bid premium methodology, approved by the Board in a decision dated 16 August 2007, accounts for the price a shipper is willing to pay for the capacity as well as the vessel volume nominated. That is, the bid premium methodology incorporates a volume component into the capacity allocation procedure. In its 16 August 2007 decision, the Board was of the view that, by accounting for volumes, the bid premium methodology encourages increased use of all available facilities relative to a bid price approach. For example, the methodology may reduce the likelihood that shippers demanding larger volumes will back out of the nomination process due to insufficient capacity remaining after allocations to smaller lot sizes.

The Board is of the view that while the bid premium methodology encourages increased use of the capacity available in the barge subcategory, there is potential for improvements in the way that volumes are accounted for in the methodology. Under the existing rules of Trans Mountain's tariff, a shipper is not allowed to submit a nomination for a volume in excess of the crude oil cargo capacity of its barge. In other words, a shipper is allowed to make a nomination for a lot size up to and including that which it can accommodate in one loading window. The Board recognizes the value in putting a limitation on the number of loading windows allowed for each nomination; in terms of the efficient use of loading facilities, it is more efficient to load fewer larger vessels than many smaller vessels. However, the Board finds that the current rules are unnecessarily restrictive on barge shippers and, in some instances, can

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[1] For example, the Reasons for Decisions on Capacity Allocation Procedures, March 2006 to August 2007; Reasons for Decision RH-4-2008; Reasons for Decision RH-2-2011; Reasons for Decision MH-001-2012; and Reasons for Decision RHW-001-2013.

be unjustly discriminatory toward smaller barges. The Board notes there are circumstances in which a small-barge shipper will not be allocated capacity despite being willing to pay a higher total bid value, in aggregate, than a large-barge shipper for the same capacity.[2]

In the Board's view, the relevant volume consideration for the purposes of the bid premium methodology in the barge subcategory should not be the size of a shipper's barge, but rather the shipper's demand for and ability to utilize the limited capacity in the subcategory. For this reason, the Board is of the view that the number of loading windows allowed per nomination should be relaxed, within reason, to allow the bid premium methodology to better reflect shippers' demand for the capacity available in the barge subcategory. A similar solution was proposed by U.S. Oil during the proceeding.

Relative to the current tariff rules, amendments in this regard are more consistent with the two key objectives of economic regulation listed above. The amendments preserve the bid premium methodology in encouraging increased use of all available capacity in the barge subcategory. They also mitigate the unjust discrimination in the current capacity allocation procedure, since shippers are less likely to be disadvantaged solely on the basis of barge size. As a result, the approach will better allocate available capacity to those barge shippers who value it most, as demonstrated by each shipper's willingness to pay for the capacity it demands. This reduces the possibility that a small-barge shipper will not be allocated capacity despite offering a higher bid value than a large-barge shipper for the same capacity.

The efficient use of the Westridge Dock is an important goal for Trans Mountain and its shippers. The Board is of the view that the added benefits from allowing more than one loading window per nomination outweigh any known loading inefficiencies caused by the change. Based on the evidence of the proceeding, the Board notes that U.S. Oil's barge can be loaded in eight to ten hours, and the Westridge Dock has been able to accommodate two loadings per month for the company on many occasions.

U.S. Oil proposed two alternative changes to Trans Mountain's tariff that would address its concerns regarding the capacity allocation procedure in the barge subcategory. These alternatives included reintroducing a limit on the size of nominations in Rule 14.3 of the tariff, and allocating capacity in the barge subcategory based on a bid price methodology rather than a bid premium methodology. In accordance with the Board's guidance set out above, the Board does not encourage any one particular size of vessel in the barge subcategory, as long as the capacity available in the subcategory is utilized to the fullest extent possible. In the Board's view, introducing a nomination limit into Rule 14.3 of the tariff is inconsistent with this approach, as it creates a competitive advantage for barges with lot sizes similar to the nomination limit. In addition, the Board does not support U.S. Oil's proposal to revert to a bid price

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[2] For example, suppose two shippers each submit nominations for the same amount of capacity. Shipper A can accommodate the entire capacity in a single loading window, and therefore must only submit one nomination. Shipper B requires two loading windows, and therefore must submit two separate nominations. Under the current tariff rules, Shipper B will not be allocated any capacity unless the total bid value of at least one of its nominations exceeds the total bid value of Shipper A's nomination. It is possible that while the total bid value of each of Shipper B's nominations is insufficient to be allocated any capacity, the sum of these total bid values exceeds the total bid value of Shipper A's nomination. In this case, Shipper B would not be allocated any capacity despite having a higher willingness to pay.

methodology in allocating capacity in the barge subcategory. The Board is of the view that the bid premium methodology is better aligned with the objective of encouraging full use of all capacity available, particularly when shippers nominate for different volumes.

Over the course of the proceeding, the Board heard discussion from parties regarding the circumstances surrounding the removal of the lot size nomination limit for barges from Rule 14.3 of the tariff. U.S. Oil argued that Trans Mountain should have set out the rationale and impacts of removing the nomination limit during the RH-2-2011 proceeding. Trans Mountain and STC, on the other hand, argued that U.S. Oil had sufficient opportunity to bring forward any concerns. Trans Mountain also indicated that discussions prior to the amendments led it to believe concerns had been addressed.

The Board did not identify deficits in Trans Mountain's process to effect this tariff amendment that could be relied upon to turn a decision on this complaint, nor does the Board necessarily expect that U.S. Oil or its affiliates would have been able to anticipate all of the implications of supporting Trans Mountain's tariff amendments in the RH-2-2011 proceeding. The Board does, however, remind both Trans Mountain and U.S. Oil of their respective responsibilities in addressing changes to the terms and conditions of transportation service. The Board expects pipeline companies to be as transparent as possible in applying for tariff amendments, which includes identifying any known or expected impacts of the proposed amendments. Similarly, shippers bear the responsibility for apprising themselves fully of tariff amendments at the time they are proposed and when making submissions to the Board on them.

Trans Mountain is directed to file draft tariff revisions with the Board, for approval, reflecting the views set out by the Board above. Trans Mountain must work with its shipper group in developing the tariff revisions. For clarity, the tariff revisions should increase the number of loading windows allowed for each nomination in the barge subcategory. If necessary, the revisions may also include rules addressing any concerns with the approach. The Board notes several concerns were raised during the proceeding, for example, that Trans Mountain or its shippers could face unreasonable inefficiencies or costs associated with multiple loadings. The Board is open to consider any tariff revisions that may address such concerns. Trans Mountain should clearly explain the rationale for each additional tariff revision, as well as the expected impacts.

Trans Mountain is directed to file the draft tariff revisions with the Board, and serve them on its shippers and other interested persons, by **20 June 2017**. The Board will then provide interested persons with an opportunity to submit comments on the tariff revisions. To facilitate this, Trans Mountain is directed to specify in its filing that any comments from interested persons must be filed with the Board and served on Trans Mountain by **5 July 2017**. Trans Mountain must file its reply comments, if any, with the Board by **12 July 2017**.

In the Board's view, the record of the proceeding is adequate to direct the aforementioned changes to the tariff. Moreover, the flexibility to address concerns should provide Trans Mountain and its shippers with adequate opportunity to find a workable solution for all parties.

The Board directs Trans Mountain to serve a copy of this decision on its shippers and all other interested parties.

The foregoing constitutes our Reasons for Decision in respect of the Complaint.

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Presiding Member

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April 2017
Calgary, Alberta

Attachment

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