



**ORDER NUMBER**  
**G-340-24**

IN THE MATTER OF  
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

Plateau Pipe Line Ltd. and Pembina Pipeline Corporation  
Complaint filed by Tidewater Midstream and Infrastructure Ltd.  
Regarding the Western Pipeline System (Northern Segment)

**BEFORE:**

B. A. Magnan, Panel Chair  
E. A. Brown, Commissioner  
T. A. Loski, Commissioner

on December 17, 2024

**ORDER**

**WHEREAS:**

- A. On May 21, 2024, Tidewater Midstream and Infrastructure Ltd. (Tidewater) filed a complaint (Complaint) regarding Plateau Pipe Line Ltd., a wholly owned subsidiary of Pembina Pipeline Corporation (Plateau) and common carrier service on the northern segment of the western pipeline system (Western System (North));
- B. The Western System (North) is a crude oil pipeline providing southbound service from Taylor, BC to Prince George, BC. It is operated by Plateau and owned by Pembina West Limited Partnership (PWLP). Plateau is the general partner of PWLP;
- C. Tidewater operates the Prince George Refinery, located 370 kilometres downstream of Taylor, BC, and relies on the Western System (North) for delivery of crude oil;
- D. By Order G-89-22 dated March 30, 2022, the BCUC approved tolls for the Western System (North);
- E. In the Complaint, Tidewater states that Plateau is attempting to charge Tidewater tolls for service on the Western System (North) that are neither approved nor just and reasonable;
- F. By Orders G-146-24, G-153-24, G-168-24, G-239-24, and G-247-24, dated May 22, 2024, May 31, 2024, June 20, 2024, September 5, 2024, and September 19, 2024, respectively, the BCUC established and furthered a regulatory timetable for review of the Complaint. The regulatory timetable included, among other things, public notice, BCUC information requests, and final and reply arguments;
- G. By Order G-221-24 dated August 15, 2024, the BCUC issued a decision regarding the confidentiality of information submitted by Plateau;

- H. In its reply argument dated October 18, 2024, Tidewater requested eligibility to apply for a Participant Cost Award (PCA) with respect to its participation in the Complaint; and
- I. The BCUC finds that the following determinations are warranted.

**NOW THEREFORE** for the reasons outlined in the decision accompanying this order, the BCUC orders as follows:

1. Plateau is directed to file a statement setting out the results of [REDACTED] [REDACTED] for each of the 2022, 2023, and 2024 contract years, along with supporting documentation, by March 17, 2025.
2. Tidewater's request for PCA eligibility is denied.
3. The Complaint is closed.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 17<sup>th</sup> day of December 2024.

BY ORDER

*Electronically signed by Bernard Magnan*

B. A. Magnan  
Commissioner

Plateau Pipe Line Ltd. and Pembina Pipeline Corporation  
Complaint filed by Tidewater Midstream and Infrastructure Ltd.  
Regarding the Western Pipeline System (Northern Segment)

**DECISION**

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Plateau Pipe Line Ltd. and Pembina Pipeline Corporation  
Complaint filed by Tidewater Midstream and Infrastructure Ltd.  
Regarding the Western Pipeline System (Northern Segment)

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**DECISION**

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**1.0 Introduction**

**1.1 Complaint**

On May 21, 2024, Tidewater Midstream and Infrastructure Ltd. (Tidewater) filed a complaint (Complaint) with the British Columbia Utilities Commission (BCUC) regarding Plateau Pipe Line Ltd. (Plateau)<sup>1</sup> and common carrier service on the northern segment (Northern Segment) of the western pipeline system (Western System). In the Complaint, Tidewater states that Plateau is attempting to charge Tidewater tolls for service on the Northern Segment of the Western System (Western System (North)) that are neither approved nor just and reasonable, and that Plateau intends to suspend service to Tidewater if it does not immediately pay certain disputed payment amounts and post a letter of credit.<sup>2</sup>

Specifically, Tidewater states in the Complaint that Plateau is demanding Tidewater pay invoices that include the costs associated with certain horizontal directional drilling work (the South Taylor Hill Project) that Plateau plans to undertake on the Western System near Taylor, British Columbia (BC), and that in doing so Plateau is charging a toll in excess of the \$61.39 per cubic meter (m<sup>3</sup>) toll approved by the BCUC in Order G-89-22.<sup>3</sup>

Tidewater requests that the BCUC:<sup>4</sup>

- Prohibit Plateau from suspending common carrier service provided to Tidewater on the Western System (North) pursuant to sections 72(2), 73, and 83 of the *Utilities Commission Act* (UCA);
- Prohibit Plateau from charging unjust and unreasonable tolls for the provision of service on the Western System pursuant to sections 65(3), 65(3.1), 72(2), 73, and 83 of the UCA; and
- Order such further relief as may be necessary.

In response to the Complaint, the BCUC established a public hearing to review the matter. Further, the BCUC ordered that Plateau could not suspend or discontinue service to Tidewater pending the BCUC's review. The regulatory process for hearing the Complaint included, among other things, an opportunity for Plateau to reply to the Complaint, public notice, BCUC information requests, and final and reply arguments.<sup>5</sup>

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<sup>1</sup> Plateau is a wholly-owned subsidiary of Pembina Pipeline Corporation.

<sup>2</sup> Exhibit B-1, pp. 9, 12.

<sup>3</sup> Exhibit B-1, p. 9.

<sup>4</sup> Exhibit B-1, p. 13.

<sup>5</sup> Orders G-146-24, G-168-24, G-247-24 dated May 22, June 20, and September 19, 2024.

## 1.2 Legislative Authority

The BCUC established its review of the Complaint pursuant to section 83 of the UCA, which states:

If a complaint is made to the commission, the commission has powers to determine whether a hearing or inquiry is to be had, and generally whether any action on its part is or is not to be taken.

Further, the UCA grants the BCUC discretion to reconsider and, if necessary, vary a BCUC order or decision. Specifically, sections 99(1) and 65(6) of the UCA provide as follows:

99(1) The commission, on application or on its own motion, may reconsider a decision, an order, a rule or a regulation of the commission and may confirm, vary or rescind the decision, order, rule or regulation.

65(6) The commission may, by order and after a hearing, sufficient notice of which has been given to all persons the commission believes may be affected, vary an order made under this section.

## 2.0 Western System History and Tolls

The Western System is a common carrier crude oil pipeline that provides southbound service from Taylor to Prince George, BC.<sup>6</sup> The Western System was initially comprised of the Northern Segment, running from Taylor to Prince George, as well as a southern segment running from Prince George to Kamloops, BC. The BCUC authorized Plateau to abandon common carrier service on the southern segment of the Western System in 2022, as it had reached the end of its economic life and there had been no nominations from shippers for several years. Use of the Northern Segment has also been declining in recent years, with Tidewater acting as the sole shipper on the system since 2019.<sup>7</sup>

The BCUC approved tolls for the Western System (North) most recently in March 2022 by Order G-89-22. In its 2022 toll application to the BCUC (2022 Toll Application), Plateau requested approval of a proposed new Western System (North) petroleum schedule, which included a toll schedule with terms and conditions (2022 Toll Schedule) and described a letter agreement effective January 1, 2022 to December 31, 2024 between Plateau's general partner Pembina West Limited Partnership (PWLP) and Tidewater (Letter Agreement). Plateau described the Letter Agreement as "the result of successful negotiations between sophisticated commercial parties" and indicated that the Letter Agreement (i) outlined the terms and conditions governing the transportation of crude petroleum on the Western System (North), and (ii) set out toll schedules for both committed shippers (i.e., Long Term Service Toll Settlement (LTSTS) shippers) and uncommitted shippers (i.e., non-LTSTS shippers).<sup>8</sup>

Plateau stated in the 2022 Toll Application that the proposed 2022 Toll Schedule was calculated taking into account the negotiated terms of the Letter Agreement, noting that:<sup>9</sup>

The proposed Toll Schedule is calculated as a flow through of the forecasted costs for the volume transported on the Western System (North), taking into account the negotiated terms of the Letter Agreement. Tidewater's committed utilization of the Western System (North) pursuant to the Letter Agreement is significantly below the current capacity of the Western System.

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<sup>6</sup> Plateau purchased the Western System from Federated Pipe Lines (Western) Ltd. on July 31, 2000. The Western System was found to be a common carrier system shortly thereafter. Exhibit C1-1, p. 4. See also, BCUC Order P-7-00, dated September 14, 2000.

<sup>7</sup> Exhibit C1-1, pp. 4–5; Exhibit B-1, p. 5. See also BCUC Order G-282-22, dated October 11, 2022.

<sup>8</sup> Exhibit C1-1, p. 6; Exhibit C1-6, BCUC IR 2.3; see also Plateau Pipeline Tolls for Western System, Exhibit B-1, p. 2.

<sup>9</sup> Plateau Pipeline Tolls for Western System, Exhibit B-1, p. 2.

The proposed Uncommitted Toll is calculated based on [REDACTED] % of the cost of Committed transportation service agreed to by PWLP and Tidewater in the Letter Agreement...<sup>10</sup>

In the 2022 Toll Schedule, the toll for LTSTS shippers was listed as \$ [REDACTED] /m<sup>3</sup> with a footnote stating that:<sup>11</sup>

[REDACTED]

The non-LTSTS toll was stated as \$61.39/m<sup>3</sup> for the Prince George delivery point.<sup>12</sup>

Tidewater filed a letter of support with the BCUC for Plateau's 2022 Toll Application.<sup>13</sup>

Following review of the application, the BCUC issued Order G-89-22, in which it ordered that:

1. The Western System (North) toll of \$61.39/m<sup>3</sup> for the Taylor to Prince George pipeline segment is approved, effective January 1, 2022 (Directive 1);
2. The revised Toll Schedule as filed in the 2022 Toll Application is accepted for filing (Directive 2);
3. The approved tolls on the Western System (North) pipeline are subject to review by the BCUC in the event of a complaint by one or more of the shippers within 60 days of the date of the order (Directive 3); and
4. The BCUC will hold the details of the 2022 Toll Application and associated documents confidential as requested by Plateau, as they contain commercially sensitive information (Directive 4).

## 2.1 The Letter Agreement

In support of the BCUC's review of the Complaint, Plateau was directed to file, among other things, a copy of the Letter Agreement and the terms and conditions associated with the Letter Agreement.<sup>14</sup>

The Letter Agreement includes, but is not limited to, the following terms and conditions:<sup>15</sup>

- a three-year contract term, with an effective date of January 1, 2022;
- [REDACTED]
- [REDACTED]
- incorporation of Pembina's Rules and Regulations<sup>17</sup> by reference.

<sup>10</sup> Plateau Pipeline Tolls for Western System, Exhibit B-1, p. 2.

<sup>11</sup> Plateau Pipeline Tolls for Western System, Exhibit B-1-1, p. 2.

<sup>12</sup> Plateau Pipeline Tolls for Western System, Exhibit B-1, 2022 Toll Schedule, p. 3.

<sup>13</sup> Plateau Pipeline Tolls for Western System, Exhibit E-1.

<sup>14</sup> Order G-153-24, dated May 31, 2024.

<sup>15</sup> Exhibit C1-3-1, Attachment A, Schedule A, pp. A-1 to A-9; Exhibit C1-1, p. 6; Exhibit C1-6, BCUC IR 2.3.

<sup>16</sup> [REDACTED]

[REDACTED] Exhibit C1-3-1, Attachment A, Schedule A, pp. A-3 to A-5, Schedule I, Schedule II.

<sup>17</sup> Pembina Pipeline Corporation Rules and Regulations Governing the Transportation of Petroleum, Effective January 1, 2023, filed as Attachment B to Exhibit C1-3-1.

## 2.2 The South Taylor Hill Project

Plateau reports that in 2021, there was an acceleration of the slope near Taylor, BC where a section of the Western System (North) resides. Plateau anticipates that this movement will continue and that, if left unmitigated, it could result in the Western System (North) no longer being fit for service. [REDACTED] and, according to Tidewater, indicated that it planned to carry out the South Taylor Hill Project in the fourth quarter of 2024, completing the work in 2025.<sup>19</sup>

Tidewater disagrees with Plateau's proposed solution to the slope stability concerns along the Western System (North) route, and states that it deducted the amounts associated with the South Taylor Hill Project from its payments to Plateau in January, February, and March of 2024 on the basis that the costs were not payable pursuant to the Letter Agreement. Tidewater reports that it [REDACTED]

Tidewater's non-payment of the full invoiced amounts prompted Plateau to issue a demand for a \$15 million letter of credit from Tidewater, pursuant to the performance assurance provisions of the Rules and Regulations. According to Plateau, when Tidewater failed to submit the requested letter of credit, Plateau advised Tidewater that it intended to suspend service to Tidewater if Tidewater did not immediately pay the outstanding amounts and post the requested letter of credit.<sup>22</sup>

During review of the Complaint, Plateau notified Tidewater and the BCUC that, due to historically low precipitation this year, the South Taylor Hill Project had been deferred to 2025 (rather than split between 2024 and 2025) and that this deferral would "result in a corresponding reduction of the tolls to be charged to Tidewater for service in 2024."<sup>23</sup>

<sup>18</sup> Exhibit C1-3-1, Schedule A, pp. A-4 to A-5.

<sup>19</sup> Exhibit C1-1, p. 8; Exhibit C1-7, BCUC IR 3.2, 3.2.1; Exhibit B-1, p. 10.

<sup>20</sup> Exhibit C1-6-1, BCUC IR 2.4, Attachment 2.1.

<sup>21</sup> Tidewater Final Argument, p. 5; Exhibit B-4, BCUC IR 2.2.

<sup>22</sup> Exhibit C1-1, pp. 9-10; Exhibit B-1, p. 12.

<sup>23</sup> Exhibit C1-10, pp. 2-3.

### 3.0 Toll Dispute

While deferral of the South Taylor Hill Project to after the expiry of the Letter Agreement resolved aspects of the Complaint, Tidewater maintains that the tolls being charged by Plateau for service on the Western System (North) exceed that which the BCUC approved in Order G-89-22.<sup>24</sup> In the section below, the Panel summarizes the parties' positions on the toll dispute and then sets out the Panel's determinations thereon.

#### *Tidewater's Position*

Tidewater argues that Plateau has been abusing its monopoly power as owner and operator of the Western System (North), and that Plateau has been charging tolls for service in excess of those approved by the BCUC in Order G-89-22. In Tidewater's view the BCUC has approved only a single toll for the Western System (North) of 61.39/m<sup>3</sup> (i.e., the non-LTSTS toll).<sup>25</sup>

Tidewater submits that while the BCUC regulates common carrier oil pipelines on a reporting or complaints basis, the BCUC has always required that the tolls and terms of service governing access to a common carrier's system be reflected in its public tariff. While the BCUC allows sophisticated parties to enter into negotiated settlement agreements governing service, the BCUC retains its statutory responsibility to approve the tolls and terms of service set out in such agreements, and all tolls charged by a common carrier must be filed with the BCUC.<sup>26</sup>

Tidewater argues that Plateau's 2022 Toll Application differed materially from previous toll applications in that it did not include a copy of the Letter Agreement, nor did Plateau request approval of the agreement. Instead, Plateau provided the BCUC with what Tidewater characterizes as "a letter application," which briefly referenced the Letter Agreement, set out the 2022 tolls for LTSTS and non-LTSTS shippers on the Western System (North), and sought approval of the 2022 Toll Schedule. Tidewater argues that as a consequence of this approach the BCUC did not, and could not, approve the Letter Agreement.<sup>27</sup>

In Tidewater's view, interpreting the BCUC's acceptance of the 2022 Toll Schedule for filing in Directive 2 of Order G-89-22 as BCUC approval to charge the LTSTS toll would be tantamount to suggesting that the BCUC abdicated its responsibility for ensuring Plateau's tolls are just and reasonable, as this would mean the BCUC approved a toll referencing a negotiated settlement and toll methodology that it had not reviewed.<sup>28</sup>

Tidewater points to Plateau's behaviour in relation to the South Taylor Hill Project as evidence of the importance of BCUC oversight. Further, Tidewater submits that Plateau has failed to provide it with the information necessary to understand forecast system costs or to assess the accuracy of invoiced amounts. According to Tidewater, Plateau was significantly delayed in completing the adjustment process for the 2022 and 2023 Variable Fee and, even when it did provide the adjustment, failed to do so transparently and in the manner agreed upon.<sup>29</sup>

Finally, in response to BCUC questions regarding the BCUC's jurisdiction to vary order G-89-22, Tidewater states that subsection 65(6) of the UCA appears to give the BCUC discretion to vary an order governing tolls and terms of service on a common carrier's pipeline system beyond that contemplated by the reconsideration provisions set out in section 99 of the UCA. Tidewater considers this additional flexibility to be consistent with the BCUC's

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<sup>24</sup> Exhibit B-8, p. 2.

<sup>25</sup> Tidewater Final Argument, pp. 3, 13; Tidewater Reply Argument, p. 6.

<sup>26</sup> Tidewater Final Argument, pp. 9–10.

<sup>27</sup> Tidewater Final Argument, p. 11.

<sup>28</sup> Tidewater Final Argument, pp. 11–12; Tidewater Reply Argument, p. 6.

<sup>29</sup> Tidewater Final argument, p. 12.



mandate under section 65 to ensure that the tolls charged by a common carrier and the terms and conditions of service on the common carrier's system are just and reasonable and not unreasonably discriminatory.<sup>30</sup>

Tidewater submits that the BCUC should exercise its authority under section 65(6) in only exceptional circumstances in order to preserve the finality of the BCUC's decisions and orders. In Tidewater's view, because Plateau no longer seeks to recover the costs associated with the South Taylor Hill Project through 2024 tolls, any discrepancy between the toll calculated by Plateau pursuant to the Letter Agreement and the toll approved in Order G-89-22 is insufficient to justify the exercise of the BCUC's discretion. This is particularly the case because, in Tidewater's view, any variance to Order G-89-22 could only apply prospectively and could not be used to retroactively increase tolls. According to Tidewater, any variance to Order G-89-22 that takes effect prior to the date of the variation order would constitute retroactive ratemaking.<sup>31</sup>

### *Plateau's Position*

Plateau argues that there is no evidence it has charged tolls that are unjust and unreasonable or otherwise in breach of any common carrier obligations. Plateau is of the view that, based on the deferral of the South Taylor Hill Project, the underlying substance of the Complaint is effectively moot, and the Complaint should be dismissed.<sup>32</sup>

Plateau submits that Tidewater's use of the Western System (North) has most recently been governed by the Letter Agreement and that "it is clear from the record of the proceeding and the parties' behaviour from the outset of the Letter Agreement that the Letter Agreement is part of the toll that was approved by [Order G-89-22]."<sup>33</sup>

Plateau states that the non-LTSTS Shipper toll of \$61.39/m<sup>3</sup> resulting from the Letter Agreement was approved by the BCUC in Order G-89-22, and the 2022 Toll Schedule resulting from the Letter Agreement was "accepted for filing". Further, in granting the toll order for the Western System (North), the BCUC specifically noted that Tidewater had stated its support for the approval of the 2022 Toll Schedule and Tidewater has confirmed that it is "an LTSTS shipper under the Petroleum Toll Schedule effective January 1, 2022 filed with the BCUC on January 12, 2022 for the Monthly Receipt Point Firm Volume".<sup>34</sup>

According to Plateau, contrary to Tidewater's submissions, this is not a situation where a pipeline operator is attempting to unilaterally collect unjust and unreasonable tolls. Rather, "Plateau is calculating tolls based on a tolling methodology that Tidewater negotiated and agreed to."<sup>35</sup>

Plateau strongly disagrees with Tidewater's position that only one toll was approved by Order G-89-22, noting that it is well accepted that the BCUC allows sophisticated commercial parties to enter into agreements for service on common carrier pipelines and that Tidewater and Plateau are two such parties who freely negotiated and entered into the Letter Agreement. Plateau therefore disagrees with Tidewater's assertion that because Order G-89-22 stated "the revised Toll Schedule as filed in the Application is accepted for filing", the BCUC did not approve the LTSTS shipper toll stated in the 2022 Toll Schedule and based upon the Letter Agreement.<sup>36</sup>

Plateau submits that Tidewater has been consistently charged the LTSTS toll in accordance with the 2022 Toll Schedule and the Letter Agreement from January 1, 2022 to present and not the toll amount of \$61.39/m<sup>3</sup> that Tidewater now alleges governs the provision of the service. In Plateau's view, "Tidewater has effectively laid in

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<sup>30</sup> Tidewater Final Argument, p. 14.

<sup>31</sup> Tidewater Final Argument, pp. 14–15; Tidewater Reply Argument, p. 7.

<sup>32</sup> Plateau Final Argument, p. 5; Plateau Reply Argument, p. 5.

<sup>33</sup> Plateau Final Argument, p. 9.

<sup>34</sup> Plateau Final Argument, p. 6.

<sup>35</sup> Plateau Reply Argument, p. 6.

<sup>36</sup> Plateau Reply Argument, p. 7.

the weeds and waited more than two years after the issuance of Order G-89-22 to advance a ‘gotcha’ argument in an attempt to relieve itself from legal obligations under the Letter Agreement it no longer likes.”<sup>37</sup>

Finally, Plateau shares Tidewater’s view that the BCUC has jurisdiction under both sections 65(6) and 99 of the UCA to reconsider and vary Order G-89-22. However, Plateau does not consider this to be an appropriate instance to do so, as (i) the 60-day period for filing a request for reconsideration has long passed, and (ii) in Plateau’s view none of the grounds for granting a reconsideration<sup>38</sup> have been met.<sup>39</sup>

Plateau submits that any alteration to Order G-89-22 would amount to a piecemeal alteration of the Letter Agreement because each piece is part of a greater commercial package.<sup>40</sup> Nevertheless, should the BCUC determine that a variance is warranted, Plateau would recommend the following changes be adopted:<sup>41</sup>

- a) Varying Directive 1 to state: “The Western System (North) Non-LTSTS toll of \$61.39/m<sup>3</sup> for the Taylor to Prince George pipeline segment is approved, effective January 1, 2022”; and
- b) Adding a new directive 5 to state: “The Western System (North) LTSTS toll of [REDACTED]/m<sup>3</sup> for the Taylor to Prince George pipeline segment is approved, effective January 1, 2024”.

### *Tidewater’s Reply to Plateau’s Proposed Variance of Order G-89-22*

Tidewater argues there are several problems with Plateau's proposed variances to Order G-89-22, including requiring the BCUC to backdate its approval of the LTSTS toll to January 1, 2024, which would result in retroactive ratemaking. In Tidewater’s view, if the BCUC varies Order G-89-22, any such variance can only take effect after the date of the variance order.

Further, Tidewater argues that the proposed variances would deviate from the Letter Agreement (which, in Tidewater’s view, the BCUC would still not have approved), including appearing to set the approved toll as final and [REDACTED].<sup>42</sup>

According to Tidewater, Plateau has effectively proposed a new LTSTS toll for the first time in its final argument, without providing Tidewater enough information to understand the basis for the toll. In Tidewater’s view, the evidentiary record in the Complaint is inadequate for BCUC and Tidewater to scrutinize whether Plateau's newly proposed Western System (North) toll is just and reasonable.<sup>43</sup>

### *Panel Determination*

In approving tolls for the Western System, the BCUC has historically:

- Approved tolls for committed and uncommitted shippers;<sup>44</sup>
- Approved Long-Term Service Toll Settlement (LTSTS) Agreements and Full Path Long-Term Service; Agreements including terms and conditions of service; and<sup>45</sup>
- Approved toll schedules containing the tolls to be charged to committed and uncommitted shippers.<sup>46</sup>

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<sup>37</sup> Plateau Reply Argument, p. 7.

<sup>38</sup> As set out in Rule 26.05 of the BCUC’s Rule of Practice and Procedure.

<sup>39</sup> Plateau Final Argument, pp. 7–9.

<sup>40</sup> Plateau Final Argument, p. 9.

<sup>41</sup> Plateau Final Argument, p. 11; Confidential Plateau Final Argument, p. 11.

<sup>42</sup> Tidewater Reply Argument, p. 7; Confidential Tidewater Reply Argument, p. 7.

<sup>43</sup> Tidewater Reply Argument, p. 7.

<sup>44</sup> See, e.g., BCUC Orders P-3-01, P-8-08, P-4-09, G-5-11, G-58-13, G-55-16, G-137-16, G-148-16.

<sup>45</sup> See, e.g., P-8-08, G-58-13.

<sup>46</sup> See, e.g., P-3-01, P-8-08, G-89-22.

The facts surrounding the BCUC's review of Plateau's 2022 Toll Application and language of Directives 1, 2, and 3 of Order G-89-22, together, make it clear that the BCUC approved both committed (LTSTS) and uncommitted (non-LTSTS) shipper tolls for the Western System (North) effective January 1, 2022.

The record shows that at the time of the 2022 Toll Application, PWLP and Tidewater had entered into the Letter Agreement voluntarily, and that the intention of the parties was for the Letter Agreement to govern Plateau's provision of service to Tidewater on the Western System (North). While a copy of the Letter Agreement itself was not included in the 2022 Toll Application, the Toll Schedule filed clearly indicated that the LTSTS shipper toll would be comprised of [REDACTED] <sup>47</sup> Tidewater wrote in support of the 2022 Toll Application.

Further, Plateau has consistently charged Tidewater the LTSTS toll since January 2022. Tidewater acknowledges in this proceeding that it has been a committed shipper during the period in question, and the record shows that Tidewater paid the LTSTS toll for over two years. Only in April 2024, following extended disagreement over the appropriateness of Plateau billing Tidewater for costs associated with the South Taylor Hill Project, did Tidewater conclude that, in fact, only the non-LTSTS toll had been approved by the BCUC.

Given the nature of the approvals sought in the 2022 Toll Application, the existence of the Letter Agreement establishing Tidewater as a committed shipper, and a lack of any non-committed shippers on the Western System (North) for several years prior to Order G-89-22, this Panel sees no merit in an interpretation of Order G-89-22 wherein only the non-LTSTS toll was approved. Rather, the Panel finds that Directives 1 and 2 together approve the LTSTS and non-LTSTS tolls as set out in 2022 Toll Schedule. This approval is reinforced in Directive 3, which refers to the "approved tolls on the Western System (North) pipeline" (emphasis added) as being subject to review in the event of a complaint within 60 days of the order. Tidewater's interpretation of the toll order is illogical, as it would mean that the BCUC approved a single uncommitted shipper toll for transportation service on the Western System when Tidewater, the only party who had expressed an interest in using the system for several years, was not an uncommitted shipper.

In regulating common carrier pipelines, the BCUC has generally exercised more light-handed regulation, giving significant weight to the outcome of successful commercial negotiations between pipeline operators and shippers. As noted by Plateau, altering the tolls resulting from such agreements has the potential to undermine the bargain agreed to by the parties, as each piece is part of a greater commercial package. Contrary to Tidewater's contentions in the Complaint, the BCUC fulfilled its responsibility as regulator of the Western System in approving the LTSTS toll. The BCUC reasonably considered the clear intentions of Plateau and its sole shipper in executing the Letter Agreement and approved the LTSTS and non-LTSTS tolls resulting from this agreement.

Finally, the Panel is concerned by delays described in the execution of [REDACTED] set out in the Letter Agreement and with the accordance of the final tolls charged to Tidewater with the BCUC-approved LTSTS toll. **As such, the Panel finds that greater BCUC oversight of this aspect of Plateau's operations is warranted and directs Plateau to file a statement setting out the results of [REDACTED] for each of the 2022, 2023, and 2024 contract years, along with supporting documentation, by March 17, 2025.**

Consequently, the Panel concludes that no variance to Order G-89-22 is warranted and the Complaint is closed.

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<sup>47</sup> Exhibit C1-6-1, BCUC IR 2.4, Attachment 2.1.

## 4.0 Other Matters Arising

### 4.1 Participant Cost Awards

In its reply argument, Tidewater requests that it be granted eligibility for a participant cost award in accordance with Part VI of the BCUC's Rules of Practice and Procedure (Rules). Tidewater submits that Plateau's conduct throughout this proceeding justifies Tidewater's eligibility for a cost award in accordance with Rule 33.03, which allows the BCUC to grant participant cost award (PCA) eligibility to a participant who is otherwise ineligible. Tidewater states that it was forced to incur significant expense preparing the Complaint and participating in this proceeding, including the expense of retaining independent consultants and legal counsel, and that these expenses could have been avoided if not for Plateau's actions.<sup>48</sup>

The Panel notes that pursuant to the Rules, participants in a BCUC proceeding arising out of a complaint and participants that represent solely their own business interests are not eligible for a cost award unless ordered by the BCUC. The Panel is not persuaded that the present circumstances warrant deviation from the standard practice for cost awards set out under the Rules. The Complaint is the direct result of a dispute between Tidewater and Plateau and relates directly to the business interests of these two parties. Further, as noted in Rule 30, the purpose of PCA is, in part, to encourage effective participation in BCUC proceedings. Tidewater's actions in this proceeding demonstrate that it was able to fully participate absent the provision of funding. **Thus Tidewater's request for PCA eligibility is denied.**

### 4.2 Request to Consolidate the Complaint and Abandonment Application

Finally, on October 7, 2024, Plateau filed an application (Abandonment Application) with the BCUC requesting approval to abandon common carrier service on the Western System (North). In its reply argument, Tidewater requests the BCUC consolidate its review of the Complaint with that of the Abandonment Application.

The Panel notes that the BCUC has appointed a separate panel to hear the Abandonment Application and as such the matter is being adjudicated in a separate proceeding apart from the Complaint. Among other things, this approach allows for a timely resolution of the disputed historic tolls while the BCUC considers the need for future operation of the Western System (North). As such, the Panel does not consider consolidation, as requested by Tidewater, to be appropriate.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 17<sup>th</sup> day of December 2024.

*Electronically signed by Bernard Magnan*

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B. A. Magnan  
Panel Chair/Commissioner

*Electronically signed by Elizabeth A. (Lisa) Brown*

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E. A. Brown  
Commissioner

*Electronically signed by Tom Loski*

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T. A. Loski  
Commissioner

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<sup>48</sup> Tidewater Reply Argument, pp. 3, 8–9.