

CANADA ENERGY REGULATOR

IN THE MATTER OF the *Canadian Energy Regulator Act*, SC 2019, c 28, s 10 (the "**CER Act**"), and the Regulations made thereunder;

AND IN THE MATTER OF File OF-Tolls-Group2-C1017-2020-01; an Application by Campus Energy Partners Suffield LP by its general partner Campus Energy Partners Operations Inc. ("**Campus**") for Tolls and Terms and Conditions of Service for the North Suffield Pipeline; and Rockpoint Gas Storage Canada Ltd. ("**Rockpoint**"), Pine Cliff Energy Ltd. ("**Pine Cliff**"), and Torxen Energy Ltd. ("**Torxen**") (the "**Complainants**") objections and complaints regarding Suffield Processing Limited Partnership and its general partner 2133151 Alberta Ltd. (now Campus) submission of new Transmission Tolls for the North Suffield Pipeline (the "**Complaint**")

EVIDENCE OF THE COMPLAINANTS

October 30, 2020

To: Jean-Denis Charlebois
Secretary of the Commission
Canada Energy Regulator
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I. INTRODUCTION

1. The following constitutes the written evidence of the three Complainants in this proceeding:

- Rockpoint Gas Storage Canada Ltd. ("**Rockpoint**");
- Pine Cliff Energy Ltd. ("**Pine Cliff**"); and
- Torxen Energy Ltd. ("**Torxen**").

2. In addition to this evidence, the Complainants continue to rely on their prior submissions in this proceeding.¹

II. BACKGROUND

3. The Complainants are current or former shippers on the North Suffield Pipeline, which, along with the South Suffield Pipeline, forms the Suffield Pipeline System. The Suffield Pipeline System is currently owned and operated by Campus Energy Partners Operations Inc. on behalf of Campus Energy Partners Suffield LP ("**Campus**"). Prior to February 2019, the Suffield Pipeline System was owned and operated by AltaGas Holdings Inc. for and on behalf of AltaGas Pipeline Partnership ("**AltaGas**").

4. Rockpoint owns and operates the AECO Hub, which is a commercial natural gas storage business with two facilities: the Suffield Facility and the Countess Facility. As detailed below, Rockpoint was a shipper on the North Suffield Pipeline pursuant to a transportation service agreement² ("**TSA**") executed with AltaGas. In reliance on the TSA with AltaGas, Rockpoint invested significant capital in a pipeline lateral to tie-in Rockpoint's Suffield Facility to the North Suffield Pipeline. Rockpoint's lateral was constructed in January 2019 and was tied into the North Suffield Pipeline on January 29, 2019. On February 1, 2019, Campus assumed ownership of the North Suffield Pipeline. A short time later, on June 5, 2019, Campus provided notice to Rockpoint terminating its TSA effective June 30, 2019 (due to late notice being provided, the TSA did not terminate until July 31, 2019 per an extension notice dated June 19, 2019). Campus proposed a new TSA that featured dramatically increased tolls and substituted more onerous shipper terms and conditions.

5. Pine Cliff is a public company actively engaged in the exploration, development and production of natural gas, crude oil and natural gas liquids. Formerly, Pine Cliff shipped dry,

¹ The Complainants' submissions include: Rockpoint Complaint [[A99840-1](#)]; Pine Cliff Complaint [[A99968-1](#)]; Torxen Complaint [[A99988-1](#)]; Rockpoint Response to SPLP [[A99989-1](#)]; Rockpoint Update re Termination of TSA [[C00077-1](#)]; Torxen Update re Termination of TSA [[C00101-1](#)]; Rockpoint-Torxen-Pine Cliff LT NEB re Objections and Complaints – SPLP Tolls (August 23, 2019) [[C01169-1](#)]; Rockpoint-Torxen-Pine Cliff Letter to CER Commission re NEB Board Members [[C01343-1](#)]; Rockpoint-Torxen-Pine Cliff Response to SPLP Letter dated 2019-09-20 (September 26, 2019) [[C01856-1](#)]; Rockpoint-Torxen-Pine Cliff Reply Comments of the Complainants (December 4, 2019) [[C03437-1](#)]; Rockpoint-Torxen-Pine Cliff Complainants' Letter to CER re ADR (March 10, 2020) [[C05134-1](#)]; Rockpoint-Torxen-Pine Cliff Letter to CER re Campus Application Deficiencies (April 15, 2020) [[C05735-1](#)]; Rockpoint-Torxen-Pine Cliff Reply to Campus Comments (April 24, 2020) [[C05874-1](#)]; Complainants' Information Request No. 1 (August 28, 2020) [[C08085-2](#)].

² Attachment 2 to Rockpoint Complaint [[A99840-2](#)].

sweet natural gas on the North Suffield Pipeline pursuant to a TSA³ executed with AltaGas on January 1, 2018. Pine Cliff's TSA was terminated by Campus on July 31, 2019 by notice dated June 5, 2019 and extension notice dated June 19, 2019. Pine Cliff continued to ship gas on the North Suffield Pipeline in 2019 pursuant to a new TSA executed with Campus on July 31, 2019 (with an effective date of August 1, 2019),⁴ but as of January 1, 2020, Pine Cliff discontinued shipping on the pipeline due in large part to uncertainty surrounding the tolling arrangement.

6. Torxen is a significant producer of oil and natural gas in the Palliser area of Southeast Alberta and ships a material volume of gas on the Suffield Pipeline System for sale at TC Energy's Mainline, at Burstall, Saskatchewan. Torxen shipped natural gas on the North Suffield Pipeline pursuant to a TSA⁵ with AltaGas dated March 1, 2018, which transportation was managed for Torxen by BP Canada Energy Group ULC ("**BP**"). The TSA and Torxen's service were terminated by Campus on July 31, 2019 by notice dated June 5, 2019, and extension notice dated June 19, 2019. Torxen currently ships natural gas on the North Suffield Pipeline pursuant to a TSA executed with Campus on July 26, 2019 (with an effective date of August 1, 2019).⁶ IPC Canada Ltd. ("**IPC**") manages transportation of gas for Torxen in accordance with the TSA.

7. Rockpoint has not shipped gas on the North Suffield Pipeline since its TSA was terminated by Campus in July 2019 as Rockpoint was not willing to acquiesce to the unilateral terms imposed by Campus in Campus' new form of TSA. Torxen and Pine Cliff, faced with a critical business need to ensure access to continuous service on the North Suffield Pipeline, had no choice but to accept the terms of the Campus TSA.

8. Campus' Application⁷ requests approval from the Commission of the Canada Energy Regulator (the "**CER**" or the "**Commission**") to charge what Campus characterizes as "market-based tolls" for service on the North Suffield Pipeline. The proposed tolls, particularly those for interruptible ("**IT**") service (also purportedly "market-based"), are markedly higher than the tolls charged by AltaGas, at which rates the parties signed TSAs with AltaGas.

9. As requested by the Complainants, and as directed by the Commission, the Application also contains cost-of-service ("**COS**") information and illustrative tolls based on that information, for the North Suffield Pipeline. Campus asserts that the evidence demonstrates that COS tolls for the North Suffield Pipeline would in fact be higher than Campus' proposed "market-based tolls" and that, accordingly, approval of Campus' market-based tolls is warranted in the circumstances.

10. It is important to note that Campus was directed to file the Application in response to the complaints filed by the Complainants in June 2019⁸ (the "**Complaint**") with respect to Campus' new proposed transmission tolls on the North Suffield Pipeline filed on June 5, 2019.⁹ The basis

³ Attachment 2 to Pine Cliff Complaint [[A99968-1](#)].

⁴ Attachment 1 to Complainants' Written Evidence.

⁵ Attachment 1 to Torxen Complaint [[A99988-2](#)].

⁶ Attachment 2 to Complainants' Written Evidence.

⁷ Campus Energy Partners Suffield LP, Sections 32, 34, 226 and 229 of the *Canadian Energy Regulator Act*, Application for Approval of Tolls and Terms and Conditions of Service for the North Suffield Pipeline, File OF-Tolls-Group2-C1017-2020-01 (June 26, 2020) [[C07022-1](#)] (the "**Application**").

⁸ Rockpoint Complaint: [[A99840-1](#)]; Pine Cliff Complaint: [[A99968-1](#)]; Torxen Complaint: [[A99988-1](#)].

⁹ [[A99794-1](#)].

of the Complaint was Campus' failure to provide even basic, detailed information required to support its proposed tolls.

11. In a letter dated June 27, 2019, in response to the Complaint as well as further correspondence requesting directed disclosure of underlying financial information,¹⁰ the National Energy Board (the "**NEB**" or "**Board**") provided the following direction to Campus:

...the Board expects [Campus], like all Group 2 companies, to be forthcoming and transparent in its provision of toll-related information to shippers, including information related to underlying financial information.¹¹

12. Accordingly, in response to the Board's Letter, on July 2, 2019, the Complainants requested that Campus provide in writing the information set out in sections P.1 – P.5 of the Board's *Filing Manual – Guide P – Tolls and Tariffs (Part IV of NEB Act)* ("**Filing Manual**" or "**Guide P**") with respect to the tolls.¹²

13. This information was never provided. Notwithstanding the Board's clear direction, Campus continued to refuse to provide even basic information to the Complainants, citing the fact that it was proposing to charge "market-based tolls", as approved in GH-2-98, rendering COS, rate of return on equity ("**RoE**"), and other underlying financial data irrelevant.¹³

14. It was only after the Commission directed Campus to file a tolls application that included the information outlined in Guide P¹⁴ that the Complainants received disclosure of any basic, relevant information to allow them to assess the proposed tolls.

15. Even then, Campus' first application was so seriously deficient that the Complainants had no alternative but to file a motion requesting the Commission to direct Campus to re-file its application with all relevant information required in Guide P.¹⁵ This motion was granted, and Campus re-filed the Application on June 26, 2020 with additional Guide P information.

16. Over a year after the Complaint was initially filed, the Complainants finally were provided with basic financial information in an Application in sufficient detail to allow them to scrutinize the proposed tolls.

17. After reviewing the information in the Application, it is now clear to the Complainants why Campus resisted disclosure. The Complainants' analysis of the COS information, described below in Section C, demonstrates that a just and reasonable COS toll for the North Suffield Pipeline is substantially lower than Campus' proposed market-based toll.

¹⁰ For example, see *Rockpoint Update Regarding Termination of the Transportation Service Agreement ("TSA") and Request for Further Process* (June 21, 2019) [[C00077-1](#)].

¹¹ National Energy Board letter dated June 27, 2019 [[C00172-1](#)].

¹² [[C01169-2](#)]. See also Complainants' letter to Campus dated August 8, 2019 [[C01169-3](#)].

¹³ For example, see *SPLP Response to the August 23, 2019 letter from Rockpoint et al requesting further process* (September 20, 2019) [[C01739-1](#)].

¹⁴ CER Letter Decision, 21 February 2020 [[C04793-1](#)].

¹⁵ Complainants' Motion re Campus Application Deficiencies [[C05735-1](#)].

III. COMPLAINANTS' EVIDENCE

18. The evidence of the Complainants set out in the following sections demonstrates that Campus' "market-based" tolling methodology is not insulated from review by the Commission, and that its proposed tolls are not just and reasonable.

19. As noted, using appropriate inputs based on the information provided by Campus in its Application and in response to information requests ("**IR**") from the Commission¹⁶ and the Complainants,¹⁷ just and reasonable COS tolls for the North Suffield Pipeline are much lower than Campus' proposed market-based tolls. Indeed, the Complainants' calculated COS tolls are lower than the current interim tolls, which reflect the tolls charged for service on the North Suffield Pipeline by AltaGas prior to Campus assuming ownership of the pipeline.

20. The evidence also demonstrates that several terms and conditions of service contained in Campus' form of TSA inappropriately shift risk and costs from Campus to the shipper. Further, Campus has introduced a new Interruptible Preferred ("**ITp**") service, which is apparently only available to firm shippers, and which reduces the priority and the value of IT service.

21. The Complainants' evidence addresses all major aspects of the North Suffield Pipeline COS, and is structured to address the following five main areas:

- A. The circumstances leading to the Complaint**
- B. Requirements for "market-based tolls"**
- C. Appropriate cost-of-service tolls**
- D. Interim tolls**
- E. Appropriate terms and conditions of service**

A. The circumstances leading to the Complaint

22. The Complainants executed individual TSAs with AltaGas for IT service on the North Suffield Pipeline. Campus elected to terminate those TSAs outright almost immediately after Campus assumed ownership of the Suffield Pipeline System (in Rockpoint's case, within 6 months of executing the AltaGas TSA). The new TSAs featured dramatically increased tolls and substituted more onerous shipper terms and conditions.

23. Campus took these actions notwithstanding the fact that:

- (a) the existing TSAs contained provision for 15 months' notice for any toll changes, and

¹⁶ [C08291-2].

¹⁷ [C08291-3].

- (b) certain representations were made to the Board and shippers in the transfer application for the Suffield Pipeline System that there were no immediate plans to increase tolls after completion of the transfer (as more fully discussed below).

24. Moreover, Campus' new toll schedule was imposed without any prior disclosure of the cost and revenue data required to allow the Complainants and other shippers to understand the basis for the substantial increase in the new tolls.

25. The circumstances of the Complainants that led to the filing of the Complaint are addressed individually below. Beforehand, however, it is important to address the circumstances regarding the sale of the Suffield Pipeline System from AltaGas to Campus.

26. On September 28, 2018, AltaGas and 2133151 Alberta Ltd. ("**2133151**"), on behalf of Suffield Processing Limited Partnership ("**SPLP**"), sought leave of the Board to sell and purchase (respectively) certain pipelines, including the Suffield Pipeline System (the "**Transfer Application**").¹⁸

27. The Transfer Application indicated that the original cost of the several pipelines to be sold – which included the Suffield Pipeline System but were not limited to those facilities – was \$103.9 million and the current value (as at the date of the Transfer Application) of all the pipelines was \$60.6 million, based on depreciation of \$43.3 million. The purchase price for all of the facilities was stated to be about \$14,736,000.

28. In the Transfer Application, 2133151 made the following representations:¹⁹

24	Conditions of Service:	2133151 has no immediate plans to alter the conditions of service offered by the Pipelines and does not anticipate any changes to the operation of the Pipelines.
Financial Matters		
25	Tolls and Tariffs:	2133151 has no immediate plans to alter or implement any changes to the tolls and tariffs on the Pipelines.

29. As confirmed by Campus in response to Complainants' IR No. 1.1 (15), Birch Hills Equity Partners, the owner of Campus, was aware of and did not object to the undertakings in the Transfer Application.²⁰ In the same IR response, Campus further states with respect to the above-cited representations that:

[t]hey were true at the time they were made, on September 28, 2018. At the time the Transfer Application was filed, there were no plans to immediately alter the terms and conditions of service nor were there any plans to immediately alter or

¹⁸ [A94251-2].

¹⁹ At pages 7-8.

²⁰ [C08291-3] at page 8 of 52.

implement changes to the tolls and tariff for the Suffield system. [underlining added]

30. As discussed below, in reliance on the representations of 2133151 made in the Transfer Application, the Complainants did not object to the transfer of the Suffield Pipeline System from AltaGas to 2133151.

31. Notably, on October 15, 2018, after the Transfer Application was submitted, AltaGas filed with the Board firm service tolls for transportation on the Suffield South and Suffield North components of the Suffield Pipeline System, as shown in Table 1 below.²¹

32. On January 28, 2019, the Board issued Order MO-001-2019 granting leave to AltaGas to transfer the Suffield Pipeline System to 2133151.²² On February 4, 2019, counsel to AltaGas and 2133151 advised the Board that the sale transaction was completed on February 1, 2019.²³ As of October 1, 2019, 2133151 formally changed its name to Campus Energy Partners Operations Inc., and SPLP formally changed its name to Campus Energy Partners Suffield LP, though Campus entities represented 2133151 and SPLP with respect to the Suffield Pipeline System prior to that date.

33. On March 11, 2019, shortly after the transaction was completed, and notwithstanding the representations made in the Transfer Application, Campus advised the Complainants that "as a result of increased demand" it was offering the Complainants new terms and tolls for transportation on the Suffield Pipeline System, for both firm and IT service. Campus stated that the holders of current IT service agreements would "have their toll amended to reflect the updated IT rates described in Schedule A."²⁴

34. Following exchanges of correspondence, including an updated "Rate Sheet",²⁵ and meetings between Campus and the individual Complainants, Campus filed its new tolls schedule for the Suffield Pipeline System with the Board on June 5, 2019, with an effective date of July 1, 2019.²⁶ As noted, Campus' new toll schedule was filed without any prior disclosure of the cost and revenue data required to allow the Complainants and other shippers to understand the basis for the substantial increase in the new tolls, despite repeated requests from the Complainants for same.²⁷

35. Table 1 below compares the October 15, 2018 AltaGas tolls, March 11, 2019 Campus tolls, and June 5, 2019 Campus tolls (which were ultimately filed with the NEB):

²¹ [A94813-1].

²² [A96781-3].

²³ [A97815-1].

²⁴ For example, see Attachment 2 to Torxen Complaint [A99988-2].

²⁵ Attachment 5 to Pine Cliff Complaint [A99968-1].

²⁶ [A99794-1].

²⁷ See the individual Complainant chronologies below for examples of same.

Table 1				
October 15, 2018 – AltaGas Tolls	March 11, 2019 – Campus Offer	June 5, 2019 – New tolls (including \$0.02 "abandonment fee")	Increase (\$) (AltaGas – Campus June 5)	Increase (%) (AltGas – Campus June 5)
N/A	N/A	2 years - \$0.260	N/A	N/A
5 years SN - \$0.165	5 years - \$0.240	5 years - \$0.220	\$0.055	33%
10 years SN - \$0.152	10 years - \$0.220	10 years - \$0.210	\$0.058	38%
10 years SS - \$0.162				
15 years SN - \$0.145	15 years - \$0.200	N/A		
20 years SN - \$0.137	20 years - \$0.180	20 years - \$0.200	\$0.063	46%
20 years SS - \$0.147				
N/A	N/A	ITp – firm rate plus \$0.02	N/A	N/A
*No interruptible rate offered	*Interruptible rate: greater of \$0.340 or AECO minus \$0.10	\$0.340	Using Pine Cliff's IT toll: \$0.1815, increase = \$0.1585	87%

36. As discussed in further detail below, within days of filing its new tolls on June 5, 2019, Campus sent letters to the Complainants providing notice of termination of the Complainants' TSAs, with an effective date of June 30, 2019.²⁸ Because Campus did not provide notice in time to effect a June 30 termination, the effective date of the terminations of the TSAs was revised by Campus to July 31, 2019 by way of an extension letter.²⁹

37. As noted above, on March 11, 2019, Campus had written the Complainants purporting to justify the dramatically higher tolls "as a result of increased demand". In its Application, however, Campus now claims that its need to increase tolls was driven by the significant challenges it faces to keep volumes flowing on the Suffield Pipeline System, including those listed at paragraph 97 of Campus' Application.³⁰ When challenged about the apparent discrepancy, Campus confirmed that such "challenges" existed at the time the Transfer Application was filed in September 2018 when the representations regarding "no immediate plans" to change the terms and conditions of service and tolls on the Suffield Pipeline System were made to the Commission's predecessor.³¹

²⁸ Pine Cliff received notice on June 3, 2019; Rockpoint received notice on June 5, 2019; and Torxen received notice by BP on June 17, 2019.

²⁹ For example, see [C00077-2].

³⁰ (a) depressed gas markets; (b) declining volumes; (c) very small shipper base; (d) the potential end of the long-term contracts and associated volumes; (e) declining credit quality of potential shippers; and (f) an aging pipeline that will require incremental operating, maintenance and capital expenditures as it gets closer to the end of its service life and integrity management programs and costs will increase.

³¹ See Campus' response to Complainants' IR 1.1 (18) [C08291-3] at page 8 of 52.

38. It is difficult to reconcile the purported justification for the dramatic changes in tolls that Campus proposed since it appears to acknowledge that regardless of the reason for the toll increase, nothing changed since the representations were made to the Board. Moreover, there is no independent evidence to show that the apparent challenges (whether to meet increased demand or to stem a loss of it) faced by the Suffield Pipeline System increased or grew worse between September 28, 2018 and March 11, 2019 (a period of just over 5 months).

39. Given the obvious contradictions and the very brief time periods involved, the foregoing suggests to the Complainants that from the time the Transfer Application was filed, Campus (or its owner, Birch Hills Equity Partners) had every intention of increasing the tolls on the Suffield Pipeline System immediately upon assuming ownership of the system regardless of what had been represented to the Board.

40. With that context, the individual circumstances of the Complainants are addressed below.

1. Rockpoint

41. Rockpoint and AltaGas agreed to terms and conditions for IT service on the North Suffield Pipeline in a TSA dated January 1, 2019 ("**Rockpoint TSA**").³²

42. At the time of the Transfer Application, noted above, Rockpoint was engaged in negotiations with AltaGas on the terms and conditions of the Rockpoint TSA. In reliance on the express representations made by 2133151 in the Transfer Application with respect to tolls and tariffs, Rockpoint did not oppose the Transfer Application.

43. Rockpoint entered into the TSA with AltaGas based on good faith negotiations between the parties and the foregoing representations made in the Transfer Application. In reliance on such representations, Rockpoint entered into a tie-in agreement with AltaGas and invested significant capital to construct a pipeline lateral to tie-in to the North Suffield Pipeline. The purpose of the tie-in was to provide Rockpoint and its customers with access to market points outside of Alberta, thereby lessening the impact of TC Energy's maintenance program on the price of gas that it would have otherwise been subjected to inside Alberta. The new Rockpoint lateral was placed in service on January 29, 2019.

44. The toll charged under the Rockpoint TSA for IT service was \$0.1925/GJ. At the time the Rockpoint TSA was signed, the cost of a five-year firm service option, the minimum term offered by AltaGas, was \$0.175/GJ.

45. Due to ongoing maintenance issues on the TC Energy system in Alberta, Rockpoint had no visibility to a source of gas supply and was unable to enter into a five-year service option. The premium that AltaGas was charging for IT service at the time (10% above firm service rates) was determined by Rockpoint to be commercially reasonable given the supply uncertainty Rockpoint was facing.

³² Attachment 2 to Rockpoint Complaint [[A99840-2](#)].

46. The Rockpoint TSA provided that the tolls could only be changed once per year by AltaGas providing written notice to Rockpoint of the adjusted toll by no later than the last day of July in such year. The adjusted tolls and charges would be effective as of the first day of November of the year following the year in which the notice was given. In effect, the Rockpoint TSA provided a minimum 15-month notice period for all toll changes.

47. Rockpoint's service began on the North Suffield Pipeline on February 2, 2019. On March 11, 2019, approximately six weeks after receiving NEB approval for the Transfer Application, and closing the transaction, Campus sent Rockpoint a letter offering firm and IT service on the North Suffield Pipeline at rates that were well in excess of the rates agreed to in the Rockpoint TSA (see Table 1).³³ Campus cited "increased demand" as the reason for the toll increases.

48. At a meeting between Rockpoint and Campus on March 22, 2019, Campus' representatives stated that they were seeking to capitalize on the dislocation in prices for natural gas inside and outside Alberta caused by the curtailments on TC Energy's system. Again, the Complainants note that this explanation is dramatically different from the explanation for the toll increases contained in both the March 11, 2019 letter and Campus' Application.

49. Campus' representatives further indicated at the March 22 meeting that while they understood and were aware of the 15-month advance notice requirement for any proposed toll increases in the existing Rockpoint TSA, they were nonetheless going to cancel the TSA, which had taken effect less than two months beforehand. Campus advised that Rockpoint could sign a new agreement with Campus' new increased toll rates if Rockpoint wanted to continue service on the North Suffield Pipeline.

50. At the March 22 meeting, Rockpoint requested from Campus, but was denied, information to support the proposed increase in tolls and the proposed changes in service offerings from which Rockpoint might select a suitable service. Campus' representatives noted that AltaGas had never increased tolls and that an increase was warranted given costs had increased since the North Suffield Pipeline was built. Further, Campus indicated that it had adequate shipper support to move ahead with a new toll filing and that Campus would have no trouble filling the pipeline given the high level of demand for the system.

51. On May 15, 2019, Campus sent Rockpoint a "Rate Update" with a revised toll schedule that matched the tolls that were eventually filed by Campus on June 5, 2019.³⁴ Again, this letter did not contain any information or data to support the toll increases.

52. On June 5, 2019, Campus sent a letter to Rockpoint advising that the Rockpoint TSA was terminated effective June 30, 2019 and that a new TSA and rate schedule would follow separately. Campus filed its new toll schedule with the NEB the same day. It was subsequently clarified that Campus' notice of termination of the Rockpoint TSA was not provided in time for the agreement

³³ Rockpoint received the same letter as that attached to Torxen's Complaint as Attachment 2: [\[A99988-2\]](#).

³⁴ Rockpoint received the same "Rate Update" letter as included as Attachment 5 to the Pine Cliff Complaint [\[A99968-1\]](#).

to terminate on June 30, 2019, and an extension notice dated June 19, 2019 was issued by Campus with a termination date of July 31, 2019.³⁵

53. On June 7, 2019, Rockpoint filed a complaint with the Board objecting to Campus' new tolls and new terms and conditions of service on the North Suffield Pipeline.³⁶ Rockpoint's complaint, along with the complaints filed by Pine Cliff and Torxen, eventually led the Commission to direct Campus to file the toll Application that is the subject of this hearing.

54. Rockpoint had concerns with several of the terms and conditions of Campus' new TSA, and, contrary to Campus' assertions in response to Complainants' IR 1.10, Rockpoint attempted to address the new terms of the TSA with Campus in private, off the record discussions. Rockpoint sent a letter directly to Campus outlining its concerns on August 13, 2019.³⁷ Notwithstanding Rockpoint's good faith attempts to negotiate a new TSA, Campus was unwilling to negotiate on any of the terms with which Rockpoint was concerned. It was Campus' unwillingness to address Rockpoint's concerns through direct negotiations that ultimately led Rockpoint to raise its concerns on the record in the Complaint proceeding. As a result, Rockpoint did not sign a new TSA and has not received service on the North Suffield Pipeline since the Rockpoint TSA was terminated in July 2019. Rockpoint has not shipped gas on the North Suffield Pipeline since May 2, 2019.

55. In effect, in Rockpoint's view, Campus exerted its market power to force Rockpoint off its system unless and until it agreed to higher "market-based tolls" and the more onerous terms and conditions than had existed in the contract it had executed with the prior owner, AltaGas.

2. Pine Cliff

56. Pine Cliff entered into a TSA with AltaGas for IT service on the North Suffield Pipeline dated January 1, 2018 ("**Pine Cliff TSA**").³⁸ The toll charged under the Pine Cliff TSA for IT service was \$0.1815/GJ. Like the Rockpoint TSA, the Pine Cliff TSA contained a provision that required 15 months' advance notice for all toll changes (i.e., notice by July, changes take effect in November of the following year).

57. On August 30, 2018, AltaGas offered Pine Cliff a Firm Transportation rate of \$0.1775/GJ for transportation of 253.6 e3m3 per day³⁹ of volume on the North Suffield Pipeline covering a 15-month term from October 1, 2018 to December 31, 2019.⁴⁰ Pine Cliff verbally accepted this offer and was waiting for the new TSA to be issued by AltaGas.

58. On September 12, 2018, AltaGas informed Pine Cliff that the Suffield Pipeline System was to be divested to Birch Hill Equity Partners.⁴¹ Subsequent to this announcement, Pine Cliff was informed that no new TSAs would be issued on the Suffield Pipeline System until the NEB approved the Transfer Application.

³⁵ [C00077-2].

³⁶ [A99840-1].

³⁷ See [C01169-5], which was filed with the Board after Campus refused to negotiate any of the terms Rockpoint raised concerns with.

³⁸ Attachment 2 to Pine Cliff Complaint [A99968-1].

³⁹ This is equivalent to approximately 9608 GJ/d.

⁴⁰ Attachment 3 to Complainants' Written Evidence.

⁴¹ *Ibid.*

59. Pine Cliff was aware of, and did not object to, the Transfer Application based on the representations made by 2133151 with respect to there being no immediate plans to change its tolls and tariffs.

60. Pine Cliff received the same draft rate sheets from Campus in March and May 2019⁴² that Rockpoint received, noted above.

61. On June 3, 2019, without prior notice, Pine Cliff received a letter from Campus indicating that the Pine Cliff TSA was terminated effective June 30, 2019.⁴³ In the letter, Campus stated that a new TSA and rate schedule would follow. In response, Pine Cliff sent a letter to Campus on June 5, 2019, requesting an explanation of the basis for the new tolls and clarification with respect to what would occur with Pine Cliff's current volumes on the North Suffield Pipeline.⁴⁴ As with the Rockpoint TSA, Campus clarified by letter dated June 19, 2019 that the Pine Cliff TSA would terminate on July 31, 2019.⁴⁵

62. On June 7, 2019, Pine Cliff received a letter from Campus with a draft firm service TSA and revised rate sheet.⁴⁶ Campus requested Pine Cliff's firm contract demands and the length of term commitment up to five years. Campus also indicated in the letter that firm service would be allocated on a first come first serve basis after June 15, 2019.

63. Pine Cliff filed its complaint with the Board on June 14, 2019.⁴⁷

64. While Pine Cliff executed a new TSA with Campus on July 31, 2019 (with an effective date of August 1, 2019),⁴⁸ it had little alternative due to downstream marketing commitments combined with a Firm Service TSA to transport volume to the North Suffield Pipeline. Had Pine Cliff's service been discontinued by Campus as a result of not having signed a new agreement, it would have resulted in material adverse business impacts to Pine Cliff.

65. In effect, in Pine Cliff's view, Campus exerted its market power to force Pine Cliff off its system unless and until it agreed to higher "market-based tolls" and more onerous terms than had existed in the contract it had executed with the prior owner, AltaGas. In other words, Pine Cliff signed the agreement under duress. As noted above, as of January 1, 2020, Pine Cliff discontinued shipping on the North Suffield Pipeline due in large part to uncertainty surrounding the tolling arrangement.

3. Torxen

66. Torxen's transportation on the Suffield Pipeline System was formerly managed on its behalf by BP. BP entered into a TSA with AltaGas for IT service on the North Suffield Pipeline effective March 1, 2018 ("**Torxen TSA**").⁴⁹ The Torxen TSA specified a toll or transportation

⁴² Attachment 5 to Pine Cliff Complaint [[A99968-1](#)].

⁴³ Attachment 6 to Pine Cliff Complaint [[A99968-1](#)].

⁴⁴ Attachment 7 to Pine Cliff Complaint [[A99968-1](#)].

⁴⁵ Attachment 4 to Complainants' Written Evidence.

⁴⁶ Attachment 8 to Pine Cliff Complaint [[A99968-1](#)].

⁴⁷ Pine Cliff Complaint [[A99968-1](#)].

⁴⁸ Attachment 1 to Complainants' Written Evidence.

⁴⁹ Attachment 1 to Torxen Complaint [[A99988-2](#)].

charge of \$0.1815/GJ, and contained the same 15-month notice provision for toll increases noted above with respect to Rockpoint and Pine Cliff.

67. As with the other two Complainants, Torxen was aware of, and did not object to, the Transfer Application based on the representations made by 2133151 with respect to there being no immediate plans to change its tolls and tariffs.

68. Without prior notice, Torxen received Campus' draft rate sheet on March 11, 2019, which is identical to the rate sheets received by Rockpoint and Pine Cliff.⁵⁰ In response to the Campus offer, Torxen wrote to Campus on March 22 pointing out the significant increase in the firm service tolls from those filed by AltaGas in October 2018, of up to 45%, and the similarly drastic proposed increase in IT tolls, at a minimum close to 90%. Given the Campus-proposed "greater of" approach for IT service tolls, Torxen pointed to a specific day on which the cost of IT service would have increased by more than 450% under the Campus offer. By its March 22 letter, Torxen provided notice of its objection to the tolls, primarily on the basis that they were not just and reasonable, and rejected the Campus offer.⁵¹

69. Campus responded to Torxen's March 22 letter on June 5, and indicated that as a result of discussions with Suffield Pipeline System shippers, Campus had adjusted the tolls it had originally proposed on March 11, 2019. The adjusted tolls were the ones filed by Campus with the Board on June 5, 2019.

70. On June 17, Torxen was advised that by letter to BP dated May 31, 2019, but not received by BP until the week of June 10, Campus provided notice of termination of the Torxen TSA effective as of June 30, 2019. For the same reasons noted above with respect to Pine Cliff and Rockpoint, Campus clarified by letter dated June 19, 2019 that the Torxen TSA was terminated on July 31, 2019.⁵²

71. Torxen filed its complaint with the Board on June 17, 2019, noting in particular that Campus had not provided any detailed information to support Campus' proposed tolls.⁵³

72. Like Pine Cliff, Torxen was faced with a critical business need for continued service on the North Suffield Pipeline and had no choice but to sign a new TSA with Campus on July 26, 2019, with an effective date of August 1, 2019.⁵⁴

73. In effect, in Torxen's view, Campus exerted its market power to force Torxen off its system unless and until it agreed to higher "market-based tolls" and more onerous terms than had existed in the contract it had executed with the prior owner, AltaGas. In other words, Torxen acted under duress; it had no choice but to execute a new TSA with Campus for IT service on the North Suffield Pipeline. Torxen remains an IT shipper on the North Suffield Pipeline.

⁵⁰ Attachment 2 to Torxen Complaint [[A99988-2](#)].

⁵¹ Attachment 3 to Torxen Complaint [[A99988-2](#)].

⁵² [[C00101-1](#)].

⁵³ [[A99988-1](#)].

⁵⁴ Attachment 2 to Complainants' Written Evidence.

B. Requirements for "market-based tolls"

74. Campus asserts that the North Suffield Pipeline was approved by the NEB as a "commercially-at-risk" pipeline charging "market-based tolls",⁵⁵ and has suggested several times in this proceeding that the implementation of COS tolls for the North Suffield Pipeline would "usurp" the basis upon which the pipeline, and associated tolls, were originally approved.⁵⁶ This is simply incorrect.

75. The tolls and tariffs filing requirements for Group 2 companies are set out in section P.6 in Guide P of the Filing Manual, and do not refer to "market-based tolls". Instead, the Commission's regulation of Group 2 companies is characterized as "complaints-based" regulation where cost information must be tracked in a manner consistent with generally accepted accounting principles ("GAAP"), and audited financial statements must be filed within 120 days after the end of each fiscal year.⁵⁷ Such statements should provide details of revenue and costs associated with the regulated pipeline. It would not make sense to require the tracking and reporting of such information if it was intended that a "market-based" pipeline would never be subject to COS regulation as suggested by Campus.

76. Guide P requires that Group 2 companies make copies of tariffs and supporting financial information readily available to interested persons. Where a shipper or other interested person is not satisfied that a toll is just and reasonable having regard to the underlying cost information (where such information is provided), a complaint may be filed with the Commission, in which case the Commission may decide to examine the tolls, as happened in this proceeding.

77. The Board determined that the original proponent of the North Suffield Pipeline was to be regulated on a complaints basis as a Group 2 company. At all times, tolls could be reviewed in light of the cost information required to be tracked by the company for the pipeline. Accordingly, the tolls were "accepted" by the Board, but never expressly approved.⁵⁸ Certainly, the proposed tolls and new terms and conditions of service Campus wishes to impose on the Complainants have never been approved by the Board or the Commission.

78. Campus acknowledged in its response to Complainants' IR 1.1 (20) that all tolls charged on a CER-regulated pipeline must be just and reasonable regardless of whether they are agreed-to in commercial agreements.⁵⁹ In this regard, the acceptance by the Board of a "market-based" toll methodology for a pipeline at a point in time does not insulate new tolls, or the tolling methodology, on the pipeline from the Commission's review or the statutory requirement that such tolls be just and reasonable. If the Commission were not able to review new tolls, or the tolling methodology on a pipeline, this would undermine the complaint-based regulation of Group 2 companies and enable pipeline companies to routinely earn amounts well in excess of a fair rate of return, without oversight from the Commission.

⁵⁵ Application, para. 91.

⁵⁶ For example, see SPLP's letter dated September 20, 2019 [C01739-1] at page 4.

⁵⁷ Canada Energy Regulator, Letter to all Group 2 Pipeline Companies (July 10, 2020), *Financial Regulation of Group 2 Companies*, available online: <https://www.cer-rec.gc.ca/en/about/acts-regulations/cer-act-regulations-guidance-notes-related-documents/tolls-tariffs-accounting/financial-regulation-group-2-pipeline-companies.html>.

⁵⁸ See GH-2-2000 at page 14.

⁵⁹ [C08291-3] at page 9 of 52.

79. In the OH-1-95 Reasons for Decision, the Board expressly dealt with a request by a Group 2 company to preserve its approved tolling methodology over the lifecycle of the pipeline.⁶⁰ In that decision, the Board approved a pipeline application by Express Pipeline Ltd. ("**Express**"), as well as Express' proposed market-based tolling methodology. In denying Express' request for the Board to approve the market-based tolling methodology on a permanent basis, the Board held:

Express requested that the approved tolling methodology not be changed over the lifecycle of the Project, and that the Board acknowledge the long-term pipeline transportation service agreements entered into between Express and its shippers as they relate to the commercial rights and obligations of these parties regarding the tolls and tariffs applicable to the transportation services to be rendered by Express. The Board is not able to grant these requests, as it does not have the authority to bind future Board panels deciding issues under Part IV of the NEBA.⁶¹ [underlining added]

80. As such, the fact that the Board may have accepted a market-based tolling methodology for the North Suffield Pipeline in GH-2-2000 is largely irrelevant to the issue before the Commission in this hearing: are Campus' proposed tolls just and reasonable?

81. In this regard, the circumstances in which the Board approved the North Suffield Pipeline and accepted the original proponent's market-based tolling methodology are materially different from the circumstances today.

82. Campus describes the "bargain" associated with the original tolls for the North Suffield Pipeline as follows:

Under the [original support] agreements, shippers would benefit from lower, market-based tolls in the early years of the pipelines' operation when traditional cost-of-service based tolls would be higher. This was especially beneficial for shippers whose committed volumes under the agreements were much higher in the early years of operation. In exchange for these benefits, the pipeline owner was allowed the opportunity to earn a return based on its management of pipeline operations and costs, and its ability to attract firm transportation revenue through competitive market-based tolls. This was the arrangement upon which the Suffield system was built and upon which it has always operated.⁶² [underlining added]

83. While the legacy contract on the system (the "TCF Agreement" held by IPC) may now feature these higher tolls in later years, the *quid pro quo* described above was never available to new shippers on the North Suffield Pipeline. Lower tolls in earlier years offset by higher tolls in later years were never offered to new shippers such as the Complainants.

⁶⁰ National Energy Board, Reasons for Decision, Express Pipeline Ltd., Facilities and Toll Methodology, OH-1-95 ("**OH-1-95**"), available online: https://docs2.cer-rec.gc.ca/l1-eng/lisapi.dll/fetch/2000/90464/90552/92264/92308/92310/1996-06-01_Reasons_for_Decision_OH-1-95.pdf?nodeid=92417&vernum=-2.

⁶¹ OH-1-95 at page 21.

⁶² Application, para. 92.

84. Indeed, Campus now seeks to escape the "at risk" aspect of its contracts with IPC and other founding shippers. By simply crediting the revenue requirement with the TCF Agreement revenues, any shortfalls in the later years relative to the fairly allocated share of the capacity costs relating to its TCF Agreement, the "commercial risk" of operating the North Suffield Pipeline has been shifted to newer shippers.

85. Further, in both GH-2-98 and GH-2-2000, no parties objected to the proposed toll or tolling methodology, whereas in the present case, shippers have already registered with the Board and the Commission serious concerns regarding whether the proposed tolls are just and reasonable.

86. Campus has not provided any evidence to suggest that there is broad support for Campus' market-based tolls from any current or prospective shippers on the North Suffield Pipeline. This is a critical deficiency in Campus' Application. In OH-1-95, the Board cited the fact that 85 percent of Express' capacity was contracted for by shippers in determining that Express' tolls were market-based and highly competitive in the market.⁶³ In this case, no one has agreed to pay the proposed tolls on the North Suffield Pipeline. In fact, IPC is paying tolls negotiated close to 20 years ago which, according to the bargain Campus describes above, are now higher than they otherwise would be in the later years as a result of having been lower in the earlier years.

87. In OH-1-95, the NEB also relied on the business judgment of the parties entering into contractual capacity commitments as a basis for concluding that the tolls were just and reasonable.⁶⁴ In the case of the North Suffield Pipeline, the founding shipper was a largely non-arm's length affiliate, regardless of what price they may have agreed.⁶⁵

88. The lack of support for Campus' tolls through commercial agreements, or any other indication of support, suggests that the tolls are not competitive in the market. Indeed, while Campus has cited TC Energy's NGTL System as a viable alternative for shippers on the North Suffield Pipeline, Campus acknowledged in response to Complainants' IR 1.11 (2) that Campus' proposed market-based IT toll is actually \$0.03 / GJ *higher* than NGTL's IT toll for similar receipt and delivery points as available on the North Suffield Pipeline.⁶⁶

89. Further, and despite the fact that Campus and its predecessor, AltaGas, claim to not have maintained cost information for the North Suffield Pipeline in accordance with the Commission's requirements, the COS information provided in the Application and in response to IRs is relevant to the Commission's determination of just and reasonable tolls for the North Suffield Pipeline.

90. In the *Milk River Pipeline Tolling Complaint*,⁶⁷ the owner of the Milk River Pipeline (Murphy Oil), a Group 2 pipeline, argued that in a highly competitive market where there were one or more alternatives to the subject pipeline, "a cost of service methodology should not be used

⁶³ OH-1-95 at page 23.

⁶⁴ *Ibid*, at page 23.

⁶⁵ See Campus' response to Complainants' IR 1.1 (1) and (2) [C08291-3] at page 5 of 52.

⁶⁶ [C08291-3] at page 42 of 52.

⁶⁷ National Energy Board, Letter Decision, Murphy Oil Company Ltd. (now Plains Marketing Canada, L.P.), Concerning Tolls for the Milk River Pipeline, available online: https://docs2.cer-rec.gc.ca/l1-eng/lisapi.dll/fetch/2000/90465/92837/94142/94143/94144/2001-08-01_Reasons_for_Decision.pdf?nodeid=94148&vernum=-2.

to set tolls or as a benchmark for gauging their reasonableness."⁶⁸ In that sense, Murphy Oil took a similar position to Campus' position throughout this proceeding.

91. In fact, the Board rejected Murphy Oil's argument, finding that the Milk River Pipeline operated in a limited competitive environment, and went on to consider the costs that should be reflected in a just and reasonable toll for the pipeline, including: operating, maintenance, general and administration, rate base, income taxes and cost of capital. In the Board's decision, the Board significantly reduced the applicable tolls on the Milk River Pipeline based on the Board's COS analysis.

92. The North Suffield Pipeline similarly operates in a limited competitive environment with one current feasible economic alternative – the NGTL System (see map at **Attachment 5**). Given the heightened complexities associated with obtaining approvals for developments on Canadian Forces Base Suffield, the Complainants believe it is unlikely that additional competing pipelines will be built in the area.

93. While similar service is available on TC Energy's NGTL System, ongoing maintenance and capacity issues have made it difficult for the Complainants to obtain reliable service. As noted above, Campus indicated to Rockpoint that the toll increases proposed in March 2019 for the North Suffield Pipeline were meant to capitalize on the price dislocations caused by curtailments on the NGTL System. The inability to reliably access the NGTL System is part of the reason that Torxen and Pine Cliff were forced to execute new TSAs with Campus and to continue to flow gas under them. Both of these Complainants have or had critical business needs to transport gas on the North Suffield Pipeline on a daily basis.

94. Further, Torxen's Princess West, Princess East and Tide Lake facilities are not connected to an active TC Energy meter station. As such, Torxen is only able to deliver to the North Suffield Pipeline from these facility locations. To enable these facilities to connect to an active TC Energy meter station would require significant changes to each facility and increased capital expenditures on the part of Torxen.

95. The next section demonstrates that Campus' proposed market-based tolls are much higher than reasonable COS tolls for the North Suffield Pipeline derived through the Complainants' COS analysis and are not just and reasonable. The purported challenges faced by the North Suffield Pipeline, as identified in paragraph 97 of Campus' Application, do not justify the extraction of an unreasonable return by Campus through "market-based tolls" when the Complainants' COS analysis demonstrates that a reasonable rate of return can be obtained through much lower COS tolls.

C. Appropriate cost-of-service tolls

96. Based on the information provided by Campus, the Complainants do not agree that the proposed market-based tolls are just and reasonable.

⁶⁸ *Ibid*, at p. 5.

97. Campus has provided an illustrative COS toll wherein they make a number of unreasonable and internally inconsistent assumptions for the purpose of demonstrating that if a COS model were applied, tolls would increase substantially from the proposed market-based tolls.

98. The Complainants note that they did not have access to the underlying financial information of the North Suffield Pipeline when they agreed with AltaGas to contracts at the current interim rates, and had to rely on the Commission to compel Campus to provide underlying financial information to assess the reasonableness of the tolls.

99. With input and review from Torxen and Pine Cliff, Rockpoint recalculated the COS tolls using reasonable and internally consistent assumptions and found that a properly applied COS model would result in tolls that are substantially below the Campus-proposed tolls and the current interim tolls being charged on the North Suffield Pipeline.

100. A summary of the current interim, Campus-proposed, Campus Cost of Service and Complainant Cost of Service tolls is set out in Table 2 below for 2019. Unit costs for the current toll and Campus' proposed toll are for the shortest duration firm service available.

101. For the purposes of determining just and reasonable IT tolls, the Complainants believe that a 10% premium on the Complainant-calculated COS toll is appropriate. This aligns with the premium previously charged by AltaGas for IT service compared to its shortest-term rate, as well as the premium charged for IT service on the NGTL System.⁶⁹

Table 2							
	Current Toll (FT - 5 year)	Current Toll (IT)	Campus Proposed (FT - 2 year)	Campus Proposed (IT)	Campus Cost of Service	Complainant Calculated just and reasonable COS toll	Complainant just and reasonable COS IT toll (+10%)
Unit Cost	\$0.175/GJ	\$0.1815/GJ	\$0.24/GJ	\$0.32/GJ	\$0.320/GJ	\$0.116/GJ	\$0.128/GJ
Abandonment Surcharge	\$0.00/GJ	\$0.00/GJ	\$0.00/GJ	\$0.00/GJ	\$0.082/GJ	\$0.005/GJ	\$0.005/GJ
Total	\$0.175/GJ	\$0.1815/GJ	\$0.24/GJ	\$0.32/GJ	\$0.402/GJ	\$0.120/GJ*	\$0.133/GJ

*Due to rounding, the Total does not match the sum of the amounts shown in the table.

102. As discussed below, the Complainants object to the adoption of ITp service on the North Suffield Pipeline, which is apparently higher priority and will further erode the value of IT service. If, however, the Commission approves Campus to offer ITp service, the Complainants believe that IT tolls should be set lower than ITp tolls in order to reflect the latter's higher priority of service.

⁶⁹ For example, NGTL's 2-year combined receipt and delivery toll is \$0.27/GJ and its combined IT receipt and delivery toll is \$0.29/GJ, a premium of 7.4%. Accordingly, a 10% premium is fair and reasonable.

103. Details of the Complainants' calculations are set out below following the CER Filing Manual and in Appendix A.

FILING MANUAL – GUIDE P – TOLLS AND TARIFF INFORMATION

104. This section, together with the schedules in Appendix A referred to herein, recalculates the illustrative COS tolls. This section relies upon the financial information provided by Campus in its Application and in Campus' responses to the Complainant and CER IRs dated September 14, 2020. References in this section are made to the illustrative toll model provided by Campus in response to the Complainants' IR 1.7 (1) – Attachment 1 – Updated Toll Model. This updated toll model corrects an arithmetical error in the average volume used to determine the per unit tolls.⁷⁰

P.1 Cost of Service

105. Schedule 1.0 of the Complainant Toll Model provides a summary of the North Suffield Pipeline's COS for the years ended December 31, 2018, 2019 and 2020.

106. Differences between the Campus illustrative COS model and the model of the Complainants are discussed in detail below.

Schedule 0.0 – Allocation Ratios

107. The Complainants agree that since the Suffield Pipeline System is operated on an integrated basis it is necessary to allocate the costs of the integrated system between the North and South Suffield pipelines.

108. The Complainants agree that it is appropriate to use different allocation ratios for capital components of costs and operating components of costs.

Capital Cost Allocations

109. The Complainants agree with the methodology and relevant inputs to determine the capital cost allocation ratio as submitted by Campus in its illustrative toll calculations. The Complainants have used the same allocation methodology and ratio as used by Campus in its COS calculations. In this regard, the Complainants' treatment of the revenues and costs associated with the existing TCF Agreement is discussed below.

Operating and Administrative Cost Allocations

110. In its illustrative COS model, Campus allocated operating and general and administrative costs of the Suffield Pipeline System based on the ratio of the available daily capacity of the North and South Suffield pipelines.

⁷⁰ In its Toll Model, Campus used 12,418,607 GJ of uncommitted volume in its per unit calculations instead of the average uncommitted volume calculated for 2017-2020 of 14,087,132 GJ. The Updated Toll Model in Complainants' IR 1.7 (1) – Attachment 1 uses 14,087,132 GJ. The Complainants note that Campus' actions have discouraged use of the North Suffield pipeline so that a more reasonable forecast of actual utilization should be higher.

111. The Complainants disagree with allocating operating costs based on the ratio of the available daily capacity of the North and South Suffield pipelines. Since operating and general and administrative costs are incurred based on the volumes shipped, the Complainants believe that it is more appropriate to allocate these costs based on the relative ratio of volume transported on the North Suffield Pipeline to the volume transported on the South Suffield Pipeline. Additional contracting on the North Suffield Pipeline or the South Suffield Pipeline in the future may affect the ratio used in this allocation.

112. As the North Suffield Pipeline has a greater available capacity than the South Suffield Pipeline, but the South line has a greater proportion of volume shipped, Campus' methodology results in the subsidization of costs of the South Suffield Pipeline's by the North Suffield Pipeline. The Complainants also note that Campus' actions since acquiring the North Suffield Pipeline, including raising tolls and imposing more onerous terms of access, have discouraged utilization of the pipeline, so the throughput figure is understated.

113. In determining the volumes transported, the Complainants relied upon the volumetric information provided by Campus in its response to Complainants' IR 1.2 (1) – Attachment 1. Daily volumes were calculated for the year ended December 31, 2017, 2018 and 2019. Daily volumes were calculated for the period ended July 31, 2020 and annualized for 2020.

114. The Complainants note that for the year ended December 31, 2017, the Suffield Pipeline System had a much higher degree of firm contracting from legacy contracts than currently and as such, the Complainants believe that this year may not be relevant to the study. The Complainants have used the average ratio of the North Suffield Pipeline volume to South Suffield Pipeline volume for 2018 to 2020 to determine the appropriate ratio to allocate operating and general and administrative costs.

115. A summary of the difference in the ratio used to allocate costs between the Campus illustrative COS calculation and the Complainant COS calculation is set out in Table 3.

Table 3		
	Campus Calculation	Complainant Calculation
Allocation Ratio	52.055%	45.067%

Schedule 1.1 – Operating Costs

116. The Complainants agree that the operating and maintenance costs as presented by Campus are representative of the operating and maintenance expenses that would be borne by a reasonable and prudent operator in operating the Suffield Pipeline System with the exception of the costs associated with the surety bond premium.

117. The Complainants agree that it is appropriate to burden the costs with either the surety bond premium or an abandonment surcharge, but not both, as the costs are meant to address the same purpose. As discussed below, a properly calculated abandonment surcharge is the least cost

alternative to the shippers and the method that the Complainants have applied in their COS calculation.

Schedule 1.2 – General and Administrative Costs

118. In its illustrative COS calculations, Campus allocated a significant portion of its overall general and administrative burden to the Suffield Pipeline System. The Complainants requested further information in IRs on the allocation methodology and the costs incurred in order to assess the reasonableness of the Campus general and administrative costs being allocated. The Complainants also asked Campus to explain the dramatic increase in general and administrative costs being allocated by Campus to the Suffield Pipeline System versus the costs previously allocated by AltaGas, as discussed below.⁷¹

119. Campus refused to adequately respond to the Complainants' IRs. As a result, the Complainants filed a motion requesting suitable and adequate responses to certain IRs, which the Commission granted in part.⁷² Based on the additional information provided by Campus in response to the Commission's ruling on the motion, the Complainants submit that Campus' allocation ratio over-allocates general and administrative costs to the North Suffield Pipeline, and is not appropriate. As discussed below, the Complainants have determined a more appropriate allocation that properly accounts for the burden associated with administering the North Suffield Pipeline assets compared to the remainder of Campus' assets.

120. As a starting point, the Complainants note that AltaGas' unaudited financial statements show that AltaGas allocated \$1.305 million in general and administrative costs to the total Suffield Pipeline System for 2018.⁷³ This is compared to Campus' stated costs of approximately \$2.1 million allocated to the Suffield Pipeline System for 2019, an increase of more than 60%. The Complainants note that the general and administrative costs allocated by AltaGas included the administration of other CER-regulated assets beyond just the Suffield Pipeline System, the allocation of which is impossible to know.

121. In the absence of better information, the Complainants calculated general and administrative costs for 2018 – 2020 using AltaGas' 2018 costs (adjusted for inflation), which were then allocated to the North Suffield Pipeline in accordance with the allocation ratio shown in Table 3 above.

122. The Complainants then took Campus' actual general and administrative costs for 2019, and budgeted costs for 2020, and subtracted the management and director fees, as Campus has not demonstrated that these are reasonable and prudent costs associated with the North Suffield Pipeline. The Complainants believe that these are costs of Birch Hill Equity Partners, Campus' sponsor, that have been allocated to Campus and that do not relate to the oversight or management of the Suffield Pipeline System assets.

⁷¹ See Campus response to Complainants' IR 1.3 (2) [C08291-3] at page 17 of 52.

⁷² CER Ruling No. 3 – Campus – North Suffield Pipeline Complaint – Motion to Compel (October 19, 2020) [C08966-1].

⁷³ [C07022-6].

123. The remaining costs were allocated to the Suffield Pipeline System using appropriate ratios determined having regard to the ratio of Campus Corporate gross and operating margin to Suffield gross and operating margin (see Schedule 1.3 in Appendix A). The Complainants note that applying ratios based on operating margin and gross margin is more appropriate for Campus' business. These ratios better capture the contribution to the business than EBITDA or contributions based on a ratio of capital assets, as utilized by Campus in its filing. Of note, Campus generates considerable gross and operating margin from a retail business, which has little to no capital assets.

124. The costs were then further allocated to the North Suffield Pipeline based on the allocation ratio shown in Table 3 above. The Complainants note that in Campus' submission, Campus decreased its allocation ratio for 2020 versus 2019 by approximately 11%, as Suffield's contribution to Campus overall was expected to decline. Campus did not provide the expected gross margin or operating margin detail for 2020 so the Complainants applied the same 11% reduction to the allocation ratio as used by Campus.

125. For 2019 and 2020, the Complainants used the average of the AltaGas and Campus costs allocated to the North Suffield Pipeline, which was then inputted to the COS calculation. The calculated Campus and AltaGas costs were relatively close, further demonstrating that the Complainants' allocation more fairly represents the general and administrative burden associated with the North Suffield Pipeline than does Campus' allocation.

Schedule 1.3 – Depreciation and Plant In-Service

126. The Complainants agree that, in the absence of maintaining the required historical cost basis and depreciation information, using the approved original cost to construct and AltaGas' cost of additions reflected in regulatory filings, is an appropriate method of estimating the Gross Plant in Service. The complainants agree with Campus' estimate of Gross Plant in Service as shown on Schedule 1.3.1 of Appendix A.

127. Notwithstanding, the Complainants have serious concerns with respect to the inputs Campus used to calculate depreciation periods for its illustrative tolls, including Campus' decision to abruptly change the economic life of the North Suffield Pipeline from 40 years to 26 years on the date of Campus' acquisition of the pipeline. There is no reasonable basis for such a change.

128. To illustrate, Campus assumed a 40-year economic life of the North Suffield Pipeline from its construction in order to calculate the opening net book value at acquisition. Campus then abruptly revised the remaining economic life of the North Suffield Pipeline from 24 years of remaining economic life to just 10 years (26 years total). This has the effect of creating a relatively higher net book value at January 1, 2019 and then drastically increasing the future period depreciation rate so that all "at-risk" capital is recovered from newer shippers. This effectively passes stranded asset and fundamental risk to shippers (other than IPC, the holder of the TCF Agreement, for which Campus is also supposedly "at-risk") in the illustrative COS tolls.

129. Further, in order to estimate the accumulated depreciation at January 1, 2019, just prior to the Campus acquisition, Campus has taken the assumed prior to acquisition depreciation rate (2.5%

per annum) multiplied by the number of years since inception (16) to calculate the depreciation percentage (40%). The depreciation percentage (40%) has been applied to the Gross Plant in Service (\$23,092,120) to calculate the accumulated depreciation at the beginning of 2019 (\$9,236,848). This method of calculation implies straight-line depreciation. To calculate their 2018 depreciation expense, Campus has multiplied the depreciation rate (2.5%) by the January 1, 2019 net book value. This implies a declining balance method of depreciation but applied to the incorrect year's opening balance. No commentary was provided to justify such a major change in depreciation methodology between 2018 and 2019.

130. The Complainants believe that consistency is needed between the selected historical depreciation life used to calculate the opening net book value on acquisition and the assumed remaining economic life and that the same depreciation methodology (straight line or declining balance) needs to be applied consistently throughout. Consistency in this regard serves to align who bears the stranded asset and fundamental risk of the North Suffield Pipeline.

131. Campus indicated in its response to the Complainants' IRs that it imputed the original 40-year life of the North Suffield Pipeline based on AltaGas' regulatory filings.⁷⁴ The Complainants believe that when the capital decision was made to build and put in-service the Suffield Pipeline System assets, a longer-term economic life was likely assumed in the capital investment decision.

132. Moreover, Campus indicated that for its own GAAP-based financial reporting, which is subject to review by senior management and Campus' auditors, Campus assumed a 30-year remaining economic life of the asset from the date of acquisition.⁷⁵ In other words, rather than only a remaining 10 year economic life under its proposal, or a 24 year remaining life under the initial 40 year approach, Campus' auditors and senior management actually extended the economic life further to 2049 (i.e., 30 additional years beyond the date of acquisition in 2019).

133. For the purposes of the illustrative toll calculation only, the Complainants have used a 40-year economic life to determine the appropriate depreciation period but note that an economic life ending in 2049 (the 30-year economic life from the date of acquisition of the pipeline that Campus used in its GAAP-based financial reporting) is likely a more reasonable input.

134. Campus' use of a shorter economic life of the North Suffield Pipeline is inappropriate for several reasons.

135. First, there is no factual basis for such a change. Campus appears to suggest that a shorter economic life is only likely to occur in a scenario where COS tolls are imposed on the North Suffield Pipeline. In this regard, Campus argues that if COS tolls, which Campus calculates to be higher than its "market-based tolls", are imposed on the North Suffield Pipeline, such tolls will not allow Campus to compete and will drive away volume.⁷⁶ The form of regulation should not dictate the used and useful life of an asset, and Campus should not be permitted to change a key economic

⁷⁴ Campus response to Complainants' IR 1.3 (6) [C08291-3] at page 18 of 52.

⁷⁵ Campus response to Complainants' IR 1.5 (3) [C08291-3] at page 26 of 52.

⁷⁶ For example, see Campus' response to Complainants' IR 1.3 (6) [C08291-3] at page 18 of 52.

term in the face of a complaint from its shippers. Moreover, the evidence is that the market-based tolls themselves have driven away volume.

136. Second, and in any event, the Complainants' calculated COS tolls are lower than Campus' market-based tolls and, if implemented, are likely to attract additional volumes to the North Suffield Pipeline, thus extending the economic life of the pipeline. Indeed, Campus' actions to date, including its GAAP-based reporting, suggest that the remaining capital should be recovered over an even longer period (30 years) than the Complainants have used in their illustrative toll calculations.

137. Third, Campus' revision to the economic life of the pipeline ignores the existing firm contract on the North Suffield Pipeline (TCF Agreement) and the capital-related capacity costs that should be allocated to that contract under the "at-risk" model for both its initial term and any renewals. In effect, Campus proposes two different depreciation scenarios – one for the shipper under the TCF Agreement and one for all other shippers. This results in shifting of the stranded cost and fundamental risk to new shippers and is not reasonable.

138. Finally, if Campus insisted that the remaining economic life of the pipeline was 10 years, there should be an impact on the net book value beginning January 2019 for the purposes of the toll calculations. Consistency between the pre-acquisition depreciation rate selected to calculate the opening net book value and the remaining economic life is paramount in determining the appropriate sharing of asset life between the period before Campus' acquisition and the period post acquisition. Where the depreciation rate changes, a concern arises regarding the consequent need to restate the accumulated depreciation account and consistency with the Commission's tolling principles.

Schedule 1.4 – Taxes Other Than Income Taxes

139. The Complainants agree that the gross amount of taxes other than income taxes as presented by Campus are just and reasonable costs of operating the Suffield Pipeline System assets. The Complainants have applied their allocation ratio calculation based on actual volumes delivered between the North Suffield Pipeline and South Suffield Pipeline in determining the appropriate allocation of these costs.

Schedule 1.5 – Regulatory Costs

140. The Complainants agree that the regulatory costs as presented by Campus are just and reasonable costs of operating the Suffield Pipeline System assets. The Complainants have applied their allocation ratio calculation based on actual volumes delivered between the North Suffield Pipeline and South Suffield Pipeline in determining the appropriate allocation of these costs.

141. With respect to Campus' proposed five-year deferral period, the Complainants note that the regulatory costs incurred relate to a prior period (i.e., from 2019 when the original Campus toll submission was prepared and filed) and should be for the account of the pipeline, and only the balance should be recovered over the remaining period (3 years left). For the purposes of the illustrative toll calculations only, however, the Complainants have used a five-year deferral period

as presented by Campus but note that Campus neglected to include the current portion in their illustrative COS calculation. The Complainants have included the current portion in their COS calculation.

Schedule 1.6 – Income Tax

142. The Complainants agree with the methodology used to estimate current income taxes, as well as the Capital Cost Allowance ("CCA") amounts and Undepreciated Capital Cost ("UCC") pools utilized in the calculation. Campus has not provided the allocation ratios used to allocate UCC pools between the North Suffield Pipeline and South Suffield Pipeline, so the Complainants have accepted the Campus calculations of CCA and UCC as presented.

143. The decline in income taxes between the Complainants' COS calculations and the Campus COS calculations are due to the reductions in allowed equity return (discussed below) and the reduction in depreciation amounts (discussed above).

P.2 Rate Base

144. As shown on Schedule 2.0 of the Complainant Toll Model, rate base comprises the average net plant in service, working capital and deferred regulatory expense.

145. The average net plant in service used for estimating rate base is the average of the beginning and ending net book value of plant in service as shown on Schedule 1.3 line 15.

146. The Complainants agree with Campus' calculations of working capital and their inclusion in rate base as just and reasonable costs of operating the North Suffield Pipeline.

147. The Complainants believe that the regulatory costs are operating costs and should be expensed rather than capitalized; however, given the subject costs are relatively immaterial, for the purposes of the illustrative COS toll calculations only, the Complainants have included them in rate base.

P.3 Financial Statements

148. The Complainants accept the financial statements as filed by Campus.

P.4 Cost of Capital

149. The Complainants note that Campus is not a standalone publicly traded company, and it is therefore appropriate to use a deemed capital structure for regulatory purposes rather than Campus' actual capital structure. The notional or deemed capital structure and RoE used in the Complainants' COS toll calculation is discussed in further detail below.

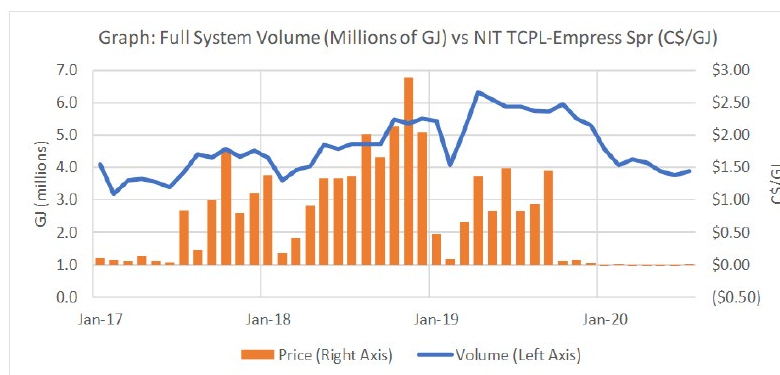
150. First, however, the Complainants wish to register a serious concern that using Campus' actual capital structure and their business RoE is an internally inconsistent assumption if the denominator used in determining the per unit tolls is based on average annual volumes on the North Suffield Pipeline.

151. As discussed below, such an application would allow Campus to earn a 15% equity return on existing volumes and a substantially higher rate of return to the extent that additional volumes returned to the system. The Complainants discuss this concern in greater detail below in connection with the throughput assumptions underlying the per unit toll calculations.

Business and Financial Risks

152. The Complainants generally agree with the industry risk factors laid out by Campus in their application.

153. The Complainants note that Campus did not address the factors that contributed to the significant increase in volume on the North Suffield Pipeline in 2018 and 2019. As enumerated by Campus in its response to the Complainants' IR 1.7 (5), the spread in pricing between AECO and the Empress market served by the North Suffield Pipeline grew very wide between mid-2017 and late 2019 as curtailments on the NGTL System impacted service availability. This spread in pricing attracted incremental volumes on the North Suffield Pipeline. The chart produced by Campus in its IR response is reproduced below.



154. Campus alleges that the decline in volume from July 2019 was driven by the collapse in the spread between AECO and Empress and that volume was re-diverted to the NGTL System once NGTL was able to accept the volume.

155. The Complainants contend that the decline in volume on the North Suffield Pipeline was significantly influenced by the timing and extent of Campus' proposed increase in tolls, as well as Campus' termination of existing contracts so that it would not have to follow the agreed upon toll increase mechanism. This was an unjust and predatory action in an attempt by Campus to capitalize on a dislocation in pricing between AECO and the downstream market served by the North Suffield Pipeline. This is also evidence that the proposed tolls are not just and reasonable and that volumes shipped on the North Suffield Pipeline started to decline as soon as the new Campus tolls were proposed in 2019.

156. The Complainants submit that Campus' own actions have created a disincentive to use the pipeline through the timing of this proposed increase in tolls, as well as its unwarranted termination of existing contracts. The Complainants' view is that just and reasonable tolls and terms of access would result in greater utilization of the pipeline, which would be more reflective of the fundamental underlying business risk conditions.

157. A properly applied COS toll would provide shippers in the area with a lower-cost alternative to NGTL deliveries and a reduced toll may attract significant additional volumes to the pipeline. Indeed, if the Complainants' tolls were set on the North Suffield Pipeline, Torxen and Pine Cliff would be prepared to reassess their level of firm contracting on the pipeline. While Rockpoint's business model makes it more difficult to contract for firm service, circumstances where it would be economic for Rockpoint to ship high volumes utilizing IT service would occur much more frequently with lower IT tolls on the North Suffield Pipeline.

158. In contrast, if Campus' proposed "market-based tolls" are accepted, it is likely that Rockpoint and Pine Cliff would continue not to utilize the North Suffield Pipeline, and Torxen would look to remove or reduce its volumes transported on the pipeline. Certainly, the Complainants would not utilize the North Suffield Pipeline at the much higher COS tolls calculated by Campus.

Deemed Capital Structure

159. A notional or deemed capital structure for the North Suffield Pipeline was assessed based on an examination of the regulatory capital structures of other similarly situated regulated assets. As provided by Campus in response to Complainants' IR 1.4 (2) and (5), comparable capital structures of similarly situated assets are (2019 reference year):⁷⁷

Table 4⁷⁸		
	Common Equity Ratio	Debt Ratio
AltaGas Utilities	39.0%	61.0%
ATCO Gas North	37.0%	63.0%
ATCO Gas South	37.0%	63.0%
ATCO Pipelines	37.0%	63.0%
NGTL	40.0%	60.0%
TC Energy Mainline	40.0%	60.0%
Trans Mountain Pipeline	45.0%	55.0%
Westcoast	40.0%	60.0%
Milk River	50.0%	50.0%
Enbridge Southern Lights	30.0%	70.0%

⁷⁷ Campus response to Complainants' IR 1.4 (2) and (5), [C08291-3] at page 21 and 23 of 62.

⁷⁸ The Complainants note the Alberta Utilities Commission recently set the equity ratios and return on common equity for the Alberta utilities (AltaGas Utilities, ATCO Gas North, ATCO Gas South, and ATCO Pipelines) for 2021 in Decision 24110-D01-2020, 2021 Generic Cost of Capital (October 13, 2020). The common equity ratios and return on equity are the same as those shown in Table 4 and Table 5. The decision is available online here: https://www.auc.ab.ca/regulatory_documents/ProceedingDocuments/2020/24110-D01-2020.pdf.

Table 4⁷⁸		
	Common Equity Ratio	Debt Ratio
Average	39.5%	60.5%
Selected	40.0%	60.0%

160. The Complainants have selected a capital structure of 40% equity and 60% debt for assessing their COS tolls.

Cost of Debt

161. Campus, in its response to the Complainants' IR 1.4 (5), also noted that Birch Hill Equity Partners has extensively tested the debt market to finance its acquisition of the Campus assets. The Complainants note that while the debt market may have been tested it was not tested in the context of earning regulated COS returns, which typically serve to increase a company's ability to take on leverage. Further, while the capital structures above are used to determine the reasonable tolls of the subject companies, none of the entities' actual capital structures match their capital structures deemed for regulatory purposes.

162. The Complainants have accepted the interest rates as presented by Campus. For the purposes of the Complainants' illustrative toll calculation, the Complainants have assumed that Campus will fund the equity component of the deemed capital structure with equity rather than debt. If not, the toll calculations (including return and taxes) should be lower.

Return on Equity

163. Similarly, to assess a just and reasonable RoE, the Complainants reviewed the rates of equity return for similarly situated regulated assets. As provided by Campus in response to Complainants' IR 1.4 (2) and (5), comparable equity returns of similarly situated assets are (2019 reference year):

Table 5⁷⁹	
	Equity Return
AltaGas Utilities	8.5%
ATCO Gas North	8.5%
ATCO Gas South	8.5%
ATCO Pipelines	8.5%
NGTL	10.1%
TC Energy Mainline	10.1%
Trans Mountain Pipeline	N/A
Westcoast	10.1%
Milk River	13.0%

⁷⁹ See footnote 78 with respect to the recently approved equity returns for the Alberta utilities for 2021.

Table 5 ⁷⁹	
	Equity Return
Enbridge Southern Lights	N/A
Average	9.7%
Selected	10.0%

164. The Complainants note that Campus selected a RoE based on a CAPM analysis that concluded an equity return of 15.0%. Campus' CAPM analysis included a size premium of 5.06%, which Campus contended was a standard component of a CAPM analysis as the relative size of the North Suffield Pipeline was much smaller than the market risk premium reference used. The Complainants agree that a size premium is a standard component of a CAPM analysis, designed to assess the relative risk of smaller companies versus a broad market-based risk premium. The Complainants further note that the impact of COS regulation would be to mitigate the risks normally associated with relative size and it is therefore inappropriate to apply a size premium in the manner Campus proposes in a regulatory return context. Campus' selected equity return, removing the impact of the size premium, would likewise be 10.0%, consistent with the equity return selected by the Complainants.

165. Because smaller utilities also located in Alberta with ample gas supply and access to market, such as ATCO Pipelines and AltaGas, are currently receiving 8.5%, the Complainants submit that 8.5% would be a reasonable RoE. In AltaGas' case, its higher level of business risk compared to other utilities in Alberta was factored into its 39% deemed capital, at 8.5% RoE.⁸⁰ Accordingly, the Complainants' believe a RoE of 10% is generous in the circumstances.

P.5 Tolls and Tariff

Throughput

166. The Complainants have used the following throughput information as provided by Campus in its response to Complainants' IR 1.2 (1) Attachment 1:⁸¹

	2017 Total	2017 Daily	2018 Total	2018 Daily	2019 Total	2019 Daily	2020 YTD	2020 Daily
North Volumes Associated with Firm Contracts	20,942,448	57,377	11,876,221	32,538	10,428,650	28,572	5,769,079	27,085
North Volumes Associated with IT Contracts	1,787,565	4,897	12,849,935	35,205	20,085,439	55,029	7,144,980	33,545
South Volumes Associated with Firm Contracts	24,678,182	67,611	30,404,416	83,300	34,965,630	95,796	15,662,253	73,532
South Volumes Associated with IT Contracts	-	-	483,808	1,326	1,505,966	4,126	1,874	9
Total Firm Contracts	45,620,630	124,988	42,280,637	115,837	45,394,280	124,368	21,431,332	100,617
Total IT Contracts	1,787,565	4,897	13,333,743	36,531	21,591,405	59,155	7,146,854	33,553
Total Volume	47,408,195	129,885	55,614,380	152,368	66,985,685	183,522	28,578,186	134,170
North Volume	22,730,013	62,274	24,726,156	67,743	30,514,089	83,600	12,914,059	60,629
South Volume	24,678,182	67,611	30,888,224	84,625	36,471,596	99,922	15,664,127	73,541
Total Volume	47,408,195	129,885	55,614,380	152,368	66,985,685	183,522	28,578,186	134,170

⁸⁰ Alberta Utilities Commission, Decision 22570-D01-2018, 2018 Generic Cost of Capital (August 2, 2018) at para. 842. Available online: https://www.auc.ab.ca/regulatory_documents/ProceedingDocuments/2018/22570-D01-2018.pdf. See also Decision 24110-D01-2020, 2021 Generic Cost of Capital (October 13, 2020).

⁸¹ [C08291-8].

167. The North Suffield Pipeline has averaged approximately 35% annual utilization from January 1, 2018 to July 31, 2020 based on the volumetric data provided by Campus. As Campus' total COS is relatively fixed, incremental volumes would add exponentially to the return earned by Campus if Campus' proposed capital structure and RoE are used.

168. Accordingly, the Complainants believe that if actual annual average volumes are used in determining the per unit tolls, a notional or deemed capital structure and comparable return to other similarly situated pipelines is the most reasonable method of assessing a just and reasonable return on the North Suffield Pipeline's rate base. An appropriate deemed capital structure and RoE are discussed above.

169. If total available capacity were used to determine the per unit tolls, the Complainants would agree that Campus' proposed capital structure and RoE would be reasonable to assess the appropriate return of the North Suffield Pipeline. This would have the effect of providing a cap on allowed return and the operator alone would bear the risk of attracting volume to the assets. In this regard, the Complainants note that Campus' own unwarranted actions of increasing tolls and terminating existing contracts have resulted in a reduction of throughput on the North Suffield Pipeline compared to historic utilization levels.

170. The Complainants note that if total capacity were used to determine the per unit tolls, the tolls would decrease dramatically. The Complainants requested that Campus recalculate their tolls based on total available capacity in Complainants' IR 1.7 (6). Campus' response did not address this request.

Contracts

171. The North Suffield Pipeline has one significant legacy contract, defined by Campus in its submission as the TCF Agreement. Campus confirmed in the response to Complainants' IR 1.7 (3) that the TCF Agreement is effectively an evergreen agreement as the holder has unlimited successive one-year renewal periods at the holder's option for service at \$0.142/GJ.⁸²

172. The Complainants note that since the TCF Agreement accounts for a substantial portion of the volume shipped on the North Suffield and South Suffield pipelines, cost causation and cost responsibility suggest that the COS on the North Suffield Pipeline should be allocated proportionately between the TCF Agreement and other volumes.

173. The Complainants have allocated to the TCF Agreement the proportionate share of costs based on the TCF Agreement shipper's use of the North Suffield Pipeline.

Unit Cost of Service

174. Schedule 5.0 of the Complainant Toll Model summarizes the unit COS for the North Suffield Pipeline.

⁸² [C08291-3] at page 32 of 52.

175. As discussed above, the net revenue requirement, determined by deducting the proportionate TCF Agreement costs from the revenue requirement, was allocated among the average volume remaining after deducting the average TCF Agreement volume from the average volume shipped on the North Suffield Pipeline from 2018 to July of 2020. The proportionate costs of the TCF Agreement are less than the actual amount of revenues collected by Campus for all reference years. Campus has therefore been over-collecting on the agreement relative to the proportionate costs associated with providing the service, providing further return to Campus versus a strictly applied COS methodology.

176. A summary of the COS tolls for 2018 to 2020 as calculated by the Complainants versus the Campus illustrative tolls are (prior to the abandonment surcharge discussed below):

Table 6			
Campus Proposal - Excess Toll Contribution			
	Campus	Complainant	% Over
2018 Tolls	\$0.213	\$0.103	106%
2019 Tolls	\$0.320	\$0.116	177%
2020 Tolls	\$0.310	\$0.118	163%

177. Campus' illustrative COS tolls are 106% to 177% higher than as calculated by the Complainants. Campus' proposed base firm service toll of \$0.24 (2 years) is likewise 107% higher for 2019 than under a properly applied COS methodology and the proposed tolls are therefore not just and reasonable.

178. As noted above, for the purposes of determining just and reasonable IT tolls, the Complainants believe that a 10% premium on the Complainant-calculated COS toll is appropriate.

P.7 Abandonment Surcharge

179. Campus states that if COS tolls are imposed on the North Suffield Pipeline, it would seek to collect an abandonment surcharge in addition to the surety bond premium. As noted above, Campus should only be permitted to recover from shippers the costs of the surety bond premium or the abandonment surcharge, but not both, as the costs are for the same purpose.

180. Principles from RH-2-2008 and MH-001-2013 encourage efficiency and avoidance of over-accumulation or under-accumulation of abandonment funds.⁸³

181. Pipelines are required to have "a mechanism" in place to ensure they have adequate funds to cover abandonment costs when they are incurred. Campus' approved mechanism is a surety bond. If Campus wanted to establish a trust mechanism and collect an abandonment surcharge, the Complainants expect it would require approval from the Commission, in which case Campus would be "expected to demonstrate to the [Commission] how the mechanism they have chosen

⁸³ For example, see RH-2-2008 at page 38.

meets the goal of ensuring that adequate funds will be set aside to cover all pipeline abandonment activities."⁸⁴

182. If Campus were approved to collect an abandonment surcharge and place it in a trust account, the Complainants expect that Campus would no longer be required to maintain a surety bond for abandonment costs. Maintaining a surety bond and abandonment trust would result in redundant abandonment funding mechanisms, which would be inefficient and result in higher costs to shippers.

183. A prudent operator should select the least-cost option. The Complainants believe that a properly calculated abandonment surcharge is the least cost alternative to the shippers and is the method that the Complainants have applied in their COS calculation, as detailed below. Going forward, the Complainants believe that Campus should be required to establish an abandonment trust and collect an abandonment surcharge as calculated by the Complainants.

184. The Complainants agree with the methodology used by Campus to determine the annual contribution to the abandonment trust, but disagree that it is appropriate to recover all the abandonment cost from future volumes as proposed in Campus' calculations.

185. As abandonment is a known lifecycle obligation and cost of any pipeline operation, the pipeline operator should have been collecting or setting aside funds for abandonment since the pipeline's inception regardless of the fact that the Commission's predecessor prescribed a more formal surcharge requirement in 2014, when the Board mandated set-aside mechanisms in MH-001-2013.

186. In particular, if, as Campus suggests, the surety bond is merely a form of security for the performance of future abandonment obligations, then Campus, and AltaGas before it, should have been collecting some amount of the abandonment costs from customers prior to the date of the Application. Campus has not identified any amounts already recovered from customers to fund abandonment requirements. Whether the prior or current owners elected to recover from their shippers an abandonment surcharge historically or to bear such a cost themselves as part of their market-based toll arrangement, it is unfair and unreasonable to expect future shippers to bear the entire abandonment cost burden alone.

187. Based on the foregoing, the Complainants have allocated costs based on the ratio of years since 2014 to historical depreciation life (40 years) in the absence of complete volume history and forecast future volumes. Since contributions will be collected in the future, the Complainants have applied a future tax rate rather than a current tax rate. Moreover, the Complainants note that if the economic horizon chosen for depreciation purposes is 2049, the amortization period for recovery of abandonment costs should be recalculated to match that date thereby further lowering the annual abandonment costs to be recovered from future shippers.

188. In its Application, Campus has estimated the current cost of abandonment for the Suffield Pipeline System to be \$27,324,710 of which they have allocated \$13,510,888 to the North Suffield Pipeline based on the capital allocation methodology described above. Campus noted in its

⁸⁴ *Ibid*, at page 41.

responses to the Complainants' IRs that the amount of the abandonment liability was determined by the amount of the surety bond that is in place with the CER for future abandonment costs.⁸⁵

189. Campus further indicated in response to Complainants' IR 1.8 (3) that the surety bond was predicated on the need to abandon the North Suffield Pipeline by removing the asset versus abandoning in-place. For the purposes of its financial reporting, however, Campus has assumed that it will be able to abandon in-place and has estimated the current, un-inflated cost of such an abandonment to be \$5.3 million (for the Suffield Pipeline System). Further, in a joint submission with AltaGas filed with the NEB after the transfer of the Suffield Pipeline System to Campus was approved, Campus and AltaGas identified the cost of future abandonment activities for the North Suffield Pipeline as \$1,805,936.⁸⁶

190. It is incumbent on the operator of a pipeline to seek out the lowest reasonable cost option to meet regulatory abandonment requirements. As a prudent operator, Campus should be expected to seek appropriate approvals to reduce the amount required to carry out appropriate abandonment activities, which in turn would reduce costs for shippers.

191. Campus' actions, including through its financial reporting, indicate that Campus expects the costs to abandon the North Suffield Pipeline will be far less than \$13,510,888. In that light, combined with Campus' duty to seek out the lowest cost alternative for abandonment, the Complainants have used the amount recorded in Campus' financial reporting for the purposes of calculating the abandonment surcharge (\$2,620,621).⁸⁷ The Complainants have further reduced the abandonment cost estimate by \$327,578 for costs that should have been recovered between 2014 and the date of acquisition.

192. The per-unit contribution was calculated based on total average volume from 2018 to July 2020. As the Complainants' COS calculation results in lower tolls than under the TCF Agreement, the Complainants have assumed that the holder of the TCF Agreement would terminate their existing agreement and sign a new TSA to take advantage of the lower tolls and thereby be subject to the abandonment surcharge. In its calculations, Campus appears to have applied the abandonment surcharge to TCF Agreement volume as well.

193. Alternatively, if the TCF Agreement did not allow the recovery of an abandonment surcharge, then Campus should be expected to absorb the proportionate abandonment costs related to TCF Agreement capacity since it was a cost of providing that service.

194. The Complainants have calculated the abandonment surcharge to be \$0.005/GJ or 94% lower than as calculated by Campus.

⁸⁵ Campus response to Complainants' IR 1.8 (1) [[C08291-3](#)] at page 35 of 52.

⁸⁶ Response to NEB Information Request re Review of Abandonment Cost Estimates for Group 2 Companies, March 14, 2019 [[A98316-1](#)].

⁸⁷ This is the share of \$5.3 million stated in Campus' financial records allocated to the North Suffield Pipeline based on the capital allocation methodology discussed above.

D. Interim Tolls

195. The evidence demonstrates that the Complainants' calculated illustrative tolls are just and reasonable and are reflective of Campus' COS both prospectively and during the interim period. The Complainants believe these tolls should be made final for the interim period.

196. This is particularly the case where Campus' behaviour throughout the proceeding has delayed the setting of final tolls, including its resistance to providing basic toll information first requested by the Complainants in early 2019. These unwarranted actions have led to considerable delay which is likely to extend the interim toll period well into 2021.

197. Further, Campus' unilateral termination of existing contracts and imposition of significantly higher tolls in 2019 were designed to circumvent the 15-month advance notice requirement of any toll increase set out in the then-existing contracts. The Complainants note Campus' representations to the Board at the time of the Transfer Application suggested no such changes were contemplated.

198. Moreover, Campus' actions have resulted in reduction in use of the North Suffield Pipeline throughout that entire period.

199. Accordingly, Campus should be required to return carrying costs during the interim period.

200. Based on the foregoing, the Complainants submit that refunds and carrying costs should be calculated for the interim period and provided to shippers.

E. Appropriate terms and conditions of service

201. As noted above, the Complainants each executed individual TSAs with AltaGas for IT service on the North Suffield Pipeline. In the Transfer Application, 2133151, on behalf of SPLP, represented that there were no immediate plans "to alter the conditions of service offered by the Pipelines". Notwithstanding, shortly after assuming ownership of the North Suffield Pipeline, Campus terminated the TSAs and provided a new form of TSA that included material changes to the terms and conditions of service on the North Suffield Pipeline as compared to the AltaGas TSAs. Many of the changes result in significant and unwarranted shifts in the balance of risk and benefits as between Campus ("**Transporter**") and a shipper operating under the agreement.

202. Campus has also introduced a new ITp service, which appears to be only available to firm service shippers, and which reduces the priority and value of IT service.

203. Detailed comments on the changes follow. For the purposes of this section, the Complainants refer to the "**AltaGas TSA**"⁸⁸ and the "**Campus TSA**".⁸⁹

⁸⁸ See Attachment 2 to Rockpoint Complaint [[A99840-2](#)].

⁸⁹ See Appendix D to the Application [[C07022-5](#)].

1. Abandonment Fee

204. Rockpoint originally objected to the \$0.02 abandonment fee proposed by Campus in its June 5, 2019 toll filing on the basis that the surety bond in place already covered abandonment costs, and Campus had not obtained approval from the NEB to charge an abandonment fee, or otherwise provided information to shippers to explain the abandonment fee.

205. Campus also proposed to increase the abandonment fee each year to account for inflation. Rockpoint had concerns with this since abandonment obligations are calculated on a net present value-basis and, per MH-001-2013, all abandonment surcharges collected from shippers must be put into a trust that is expected to earn a certain return which would be realized by the trust.

206. As noted in Campus' Application, Campus is no longer proposing to collect an abandonment fee as part of its "market-based tolls".

207. As described in detail above, the Complainants submit that an appropriately calculated abandonment surcharge is the lower cost abandonment funding mechanism for shippers and if Campus obtains approval from the Commission to collect an abandonment surcharge and put it in a trust, the Complainants believe that Campus will no longer be required to maintain a surety bond.

2. Interruptible Preferred Service

208. The Campus TSA introduces an ITp service on the North Suffield Pipeline. The Complainants note that ITp appears to be only available to firm service shippers, in priority to IT service. The introduction of ITp represents a material change in the service offered on the North Suffield Pipeline. This is particularly the case for IT service shippers, who will be prejudiced in their ability to utilize the North Suffield Pipeline by the new priority service, which will further erode the value of IT service.

209. In the Complainants' view, Campus has not justified the need to offer ITp service and should not be permitted to do so.

210. Campus suggests that pricing for ITp service is associated with the term commitment of firm shippers, but has not provided sufficient information to objectively justify the significant difference in prices between ITp and IT services. As noted above, if Campus is permitted by the Commission to offer ITp service, the Complainants submit that IT tolls should be set lower than ITp tolls in order to reflect the higher priority of ITp service.

3. Article 2.0 Annual Increase of Tolls and Charge

211. Campus has removed the toll adjustment provision, noted above, which provides 15-months' notice of any toll changes. Campus claims that it removed this provision because "it desires the flexibility to adjust its IT tolls on a monthly basis in response to prevailing market conditions."⁹⁰ The Complainants note that the removal of the notice provision would also allow

⁹⁰ Application, at para. 119.

Campus to adjust firm service tolls on a monthly basis, which is a further disincentive for parties to contract for firm service.

212. Without an adequate notice provision for adjustment of tolls in a TSA, a shipper will have no certainty with respect to the tolls it will be paying on the North Suffield Pipeline in any given month. Further, as a Group 2 company, Campus need only file updated tolls with the CER in order to effect toll changes. This is likely to lead to disputes between Campus and its shippers, including further complaints, which is contrary to regulatory efficiency.

213. The Complainants request that the 15-month notice provision, or a similarly reasonable notice provision not less than 12 months, be included in the Campus TSA.

4. Article 4.3 Testing of Measuring Equipment

214. In the AltaGas TSA, the tests and methods for verifying the accuracy of measuring equipment referenced in Article 4.3 were to be acceptable to both the Transporter and the shipper. In the Campus TSA, however, such tests and methods need only be acceptable to the Transporter. The basis for this change is unclear.

215. Further, in Article 4.3 of the Campus TSA, the expense of testing measuring equipment has been moved from the Transporter to the shipper in all cases. Pursuant to the change, the shipper will be responsible for the costs of all tests of measuring equipment, regardless of whether such tests are requested by the shipper. Importantly, the Campus TSA mandates that measuring equipment be tested at least once every 90 days at the shipper's cost.

216. Respectfully, a shipper has a right to some assurance that the gas it is putting onto or taking from the Transporter's system has been measured accurately. A shipper should not fully bear the costs of ensuring the Transporter's system is operating correctly in this regard, particularly where the shipper has no say in the acceptability of the testing methods. Under the AltaGas TSA, the Transporter bore the costs of tests of measuring equipment, except where a shipper-requested test showed an inaccuracy of less than 2% (in which case, it was the shipper's expense). This is appropriate, as the Transporter should be expected to pay the expense of ensuring the integrity of its system, including in relation to measurement of gas, while still holding a shipper accountable if a potentially unnecessary test has been requested.

217. The fact that some shippers may own the measuring equipment does not justify the shift of costs. Indeed, the same was true when AltaGas owned the North Suffield Pipeline, yet the AltaGas TSA contained a more appropriate sharing of costs.

218. The Complainants request that Campus revert to the language from the AltaGas TSA in section 4.3.

5. Article 5.4 Failure of Supply and Article 5.5 Failure of Market

219. The pricing mechanisms in Article 5.4 [Failure of Supply] and Article 5.5 [Failure of Market] have been changed significantly. As noted in Campus' Application, the AltaGas TSA provided that the Transporter could charge 130% of the Transporter's highest cost of gas on a day

that the customer's deliveries on the system exceeded its receipts. Now, in the same circumstances, the Campus TSA states that the Transporter *will* charge the highest price transacted at the AECO/NIT index that day *plus* the higher of the Empress transportation tariff published by TransCanada Corporation and the Empress – AECO/NIT market differential published by CGPR on that day.

220. Similarly, the AltaGas TSA provided that the Transporter could purchase gas at 70% of the Transporter's lowest cost of gas on a day that customer's receipts exceed deliveries. In the same circumstances, the Campus TSA provides that Transporter "will purchase from the customer at the lowest price transacted at the AECO/NIT index published by CGPR less the lower of the Empress transportation tariff published by TransCanada Corporation and the Empress – AECO/NIT market differential published by CGPR on that Day" [underlining added].

221. Based on the Complainants' review, the pricing mechanisms now appear to heavily favour the Transporter and may be considered punitive. Again, this represents a significant and unwarranted shift in risk to the shipper under the Campus TSA.

222. Further, the Articles do not clearly contemplate or outline the interplay between upstream / downstream force majeure events on interconnected pipelines that may impact supply or delivery on the system and that are beyond the control of the shipper. If no relief is provided to a shipper in such cases, while the Transporter is insulated from associated risks pursuant to Article 5.7, there may again arise an unreasonable imbalance in the Campus TSA.

223. Having regard to the above, the Complainants request that the pricing mechanisms in Articles 5.4 and 5.5 from the AltaGas TSA be reinserted, and that Campus include language to clarify the nature of the obligations where there are upstream / downstream force majeure events on interconnected pipelines.

IV. CONCLUSION

224. This concludes the Complainants' written evidence. The Complainants submit that the Commission should reject the tolls and contractual terms and conditions proposed by Campus in its Application as unjust and unreasonable and, further, that the Commission should approve as just and reasonable the tolls and the terms and conditions recommended by the Complainants herein.

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ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 30th day of October, 2020.

(signed) "*Jason Dubchak*"

Jason A. Dubchak
Vice President, Legal & Regulatory
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(signed) "*Terry McNeill*"

Terry McNeill
Chief Operating Officer
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