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Withheld pursuant to/removed as

s.14;s.13

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s.14

Nanninga, Tanera AG:EX

Subject: Meeting with MDE/MGH on KM
Location: Room 112 MOE office

Start: Thu 2018-01-25 3:30 PM
End: Thu 2018-01-25 4:00 PM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: MINCAL, ENV ENV:EX
Required Attendees: Plecas, Bobbi ENV:EX; Heyman, George ENV:EX; Smith, George AG:EX; Eby, David AG:EX; Howlett, Tim GCPE:EX

Update on Kinder Morgan

MGH
MDE
Bobbi Plecas
AG staff

Issues manager Tim Howlett
MA George Smith
MA Caelie Frampton

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s.14

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s.14;s.13



File OF-Fac-Oil-T260-2013-03 03
18 January 2018

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Calgary, AB T2P 5H1
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Ms. Maureen Killoran, Q.C.
Osler, Hoskin & Harcourt LLP
Suite 2500, 450 – 1st Street SW
Calgary, AB T2P 5H1
mkilloran@osler.com

Dear Ms. Killoran and Mr. Denstedt:

**Trans Mountain Pipeline ULC (Trans Mountain)
Trans Mountain Expansion Project (Project)
Notice of motion dated 14 November 2017 regarding future National Energy Board
(NEB or Board) process for permitting matters (Motion)
Board Decision**

A. Background

Certificate of Public Convenience and Necessity OC-064 (Certificate), along with certain other Board Orders, authorizes the construction and operation of the Project. Certificate Conditions 1 and 2 read as follows:

1. Condition compliance

Trans Mountain must comply with all of the Certificate conditions, unless the NEB otherwise directs.

2. Compliance with commitments

Without limiting Conditions 3, 4, and 6, Trans Mountain must implement all of the commitments it made in its Project application or to which it otherwise committed on the record of the OH-001-2014 proceeding.

In the course of the Board's hearing to consider the Project (OH-001-2014), Trans Mountain committed to apply for, or seek variance from, provincial and municipal permits and authorizations that apply to the Project. The Board summarized this commitment, which falls within the purview of Certificate Condition 2, at Page 251 of its Report, as follows:

.../2

Suite 210, 517 Tenth Avenue SW
Calgary, Alberta T2R 0A8

517, Dixième Avenue S.-O., bureau 210
Calgary (Alberta) T2R 0A8

Canada

Telephone/Téléphone : 403-292-4800
Facsimile/Télocopieur : 403-292-5503
www.neb-one.gc.ca

Telephone/Téléphone : 1-800-899-1265
Facsimile/Télocopieur : 1-877-288-8803

Trans Mountain said it would apply for, or seek variance from, all permits and authorizations that are required by law, and would continue to work with all municipalities to understand the applicability of bylaws and standards related to the construction and operation of the Project.

On 14 November 2017, Trans Mountain filed a Motion¹ (and Book of Authorities) in which it requested:

- a) that a standing Panel of the Board be struck to determine Trans Mountain's compliance with, or variance from, Condition 2 of the Certificate as it relates to Trans Mountain's commitment in respect of provincial and municipal permits and authorizations; or, in the alternative, that the existing standing Panel of the Board, struck to determine condition compliance in respect of the Project, also determine Trans Mountain's compliance with, or variance from, Condition 2 of the Certificate as it relates to Trans Mountain's commitment in respect of provincial and municipal permits and authorizations; and,
- b) that time lines for determining compliance with, or variance from, Condition 2 be set as follows:
 - i) Trans Mountain or the relevant permitting authority (or authorities, depending on the context) may apply for an Order of the Board regarding compliance with, or variance from, Condition 2. Requests would include the specific relief requested from the Board and the relevant background information. The application may seek an Order with respect to one or multiple permits;
 - ii) the permitting authority or Trans Mountain, as the case may be, may file a response within seven (7) days of the request. For permitting authorities, this response would include the specific information they require to issue the permit or group of permits in question;
 - iii) the applicant may file a reply within four (4) days of the other party's response; and,
 - iv) the Board will use all reasonable efforts to issue an Order within seven (7) days of the reply ordering Trans Mountain to proceed, and specifying the conditions, if any, on the work to be undertaken as may be required to comply with Condition 2.

¹ The Motion subsumes a portion of the relief sought in an earlier notice of motion and notice constitutional question (NCQ) that Trans Mountain filed on 26 October 2017 (specifically, Paragraph 1c) of that motion relating to potential future Board process). On 15 November 2017, the Board decided to consider the two motions separately. The balance of Trans Mountain's 26 October 2017 filing was considered via a separate process (Hearing MH-081-2017), the full record of which can be found here. In reaching its decision on this Motion, the Board considered submissions made in the MH-081-2017 proceeding prior to the Board's decision to separate the motions, to the limited extent that they related to future process.

B. Written comment process and filings received

On 16 November 2017, the Board set down a written comment process to consider the Motion. All persons potentially impacted by the Motion were permitted to file comments by 28 November 2017.

The Board received comments opposing the Motion from the Attorney General of British Columbia (British Columbia), the City of Chilliwack (Chilliwack), the City of Surrey (Surrey), Katzie First Nation, and the Township of Langley (Langley).

Comments supporting the Motion were received from the Attorney General of Canada (Canada) and the Province of Alberta (Alberta).

Trans Mountain was permitted to, and did, file reply by 4 December 2017.

C. Trans Mountain's submissions

Trans Mountain argued that the Board has the authority to grant the Motion pursuant to sections 12 and 13 of the *National Energy Board Act* (NEB Act) and Certificate Condition 1. It submitted that the Board has broad, exclusive jurisdiction to make orders and establish processes related to Trans Mountain's compliance with Certificate conditions. It further submitted that the Board would not be fettering its discretion, as the process would be generic in nature. Any party could seek process modifications based on the specific circumstances in any given case.

Trans Mountain also argued that the Motion in and of itself does not raise a question of constitutional law, and that, if any specific dispute were to engage a new question of constitutional law, Trans Mountain would follow the necessary procedural steps at that time.

Trans Mountain submitted that its proposed process is transparent, efficient, fair for all parties, and would provide regulatory certainty needed for the Project to be completed. It stated that the Project has already undergone a detailed and rigorous review over more than five years of process, and it has been found to be in the public interest of Canada.

Trans Mountain argued that it has a right to timely consideration of compliance matters. It also argued that the timing for Project execution is critical, noting that, as a principal result of delays in the regulatory and permitting processes, the planned Project in-service date has moved from 31 December 2019 to 30 September 2020 (absent mitigation or acceleration measures).

Trans Mountain submitted that provincial and municipal permitting presents a large number of potential compliance issues (several thousand permits are required). Trans Mountain stated that, without process certainty to manage potential future compliance obstacles, it will be unable to carry out construction in an orderly and efficient manner. It submitted that risks to its

construction schedule, in combination with delays that the Project has already encountered, could put the Project in jeopardy. It argued that Project delays or cancellation will result in the loss of significant economic and social benefits to Canada, adversely affect municipalities and Indigenous communities, and cause substantial harm to Trans Mountain and Project shippers.

Trans Mountain indicated that it has worked cooperatively with provincial and municipal authorities and has had, for the most part, positive interactions with them. It expects to obtain the necessary permits on a schedule and on terms mutually agreeable to the relevant parties. However, it submitted that there is a good probability that disputes or uncertainties may arise regarding compliance with municipal permitting. It stated that it has already encountered continuing delays in the City of Burnaby's (Burnaby's) permitting process.

D. Interested parties' submissions

i) British Columbia

British Columbia submitted that Trans Mountain has led no evidence to suggest that there are, or likely will be in future, any issues arising in relation to permitting and authorizations on matters within British Columbia's jurisdiction. It argued that the Board should not speculate that provincial or municipal permitting authorities may fail to issue permits and authorizations in a timely fashion. British Columbia submitted that the Board can only recommend Certificate variations to the Governor in Council and that there is no rationale for the Board to set up a standing panel to hear variance applications.

British Columbia described its agreement with Trans Mountain, which contains a dispute resolution process regarding provincial regulatory and decision-making processes (Agreement). It argued that the Board should dismiss the Motion on the basis that Trans Mountain has an adequate alternative remedy available to it under that Agreement.

British Columbia submitted that any future motions to vary Certificate Condition 2 will, in each case, likely raise a constitutional question, and that the Board should require service of a NCQ in any case where the validity, applicability, or operability of a provincial enactment is at issue.

British Columbia argued that a template schedule should not be used for future motions. To be effective, schedules must take into account the factual and legal complexities of the particular matter at issue. It submitted that the Project presents a complex regulatory challenge for the Province; estimating that approximately 1,200 provincial permits are required. British Columbia stated that it has a responsibility to consider each permit application and to consult with Indigenous peoples whose interests are affected by permitting decisions. It argued that, while it would be *ultra vires* a permitting authority to refuse a Project permit, a permitting authority may impose conditions.

ii) Chilliwack

Chilliwack submitted that, for any municipal permit disputes, the Board should establish an appropriate specific process, as necessary to adequately deal with the matter. It stated that there is no need to create a pre-emptive generic process. Chilliwack argued that, without knowing what permitting disputes Trans Mountain is trying to address, it cannot determine whether the proposed process will be adequate, which it submitted is unacceptable and unfair.

Chilliwack expressed concern that Trans Mountain will use the proposed process as a pressure mechanism or leverage against Chilliwack. It requested that, if the Board grants the Motion, Trans Mountain be required to pay all expenses that Chilliwack reasonably incurs in respect of each application initiated by Trans Mountain under the process.

iii) Katzie First Nation

Katzie First Nation submitted that the Motion is essentially a request for a change in the nature of the Project approval. It argued that the proposed process marginalizes Aboriginal groups. Katzie First Nation also submitted that provincial regulatory processes must be allowed to proceed in a manner that ensures that the honour of the Crown is upheld in decision-making relevant to the Project. It is of the view that, because Trans Mountain is proposing to abridge or alter that process, it could fundamentally undermine the engagement of Aboriginal groups in respect of future authorization and regulatory processes.

Katzie First Nation argued that Trans Mountain does not have the right to have the Board dictate to provincial decision-makers how and when to proceed to a decision point, or to determine through the proposed process whether a provincial authorization is required.

iv) Langley

Langley submitted that the Motion is premature and that Trans Mountain's proposed process is onerous, rigid, and unnecessary. It stated that it has not delayed or withheld any municipal permits, and it is uncertain what disputes Trans Mountain anticipates that the proposed standing panel would consider and whether the proposed process would be adequate to address such disputes. It argued that establishing a pre-emptive "one-size-fits-all" process creates unnecessary rigidity without material benefit.

Langley further submitted that the proposed process does not have clear triggers, but has onerous deadlines, making it vulnerable to misuse. It indicated that Trans Mountain's commitment to apply for, or seek variance from, provincial and municipal permits and authorizations is of paramount importance to Langley. It requested that, should the Board grant the Motion, Trans Mountain be required to pay all expenses reasonably incurred by a municipality if Trans Mountain triggers the process.

v) *Surrey*

Surrey submitted that the Motion is an attempt to unlawfully fetter, circumvent, and undermine the legislative scheme to the detriment of municipalities. It argued that, only after certain regulatory steps are taken, including detailed routing decisions for the Project, can municipalities and the Board give real and meaningful consideration to appropriate terms and conditions to be included in any municipal permits.

Surrey submitted that the Board does not have jurisdiction to grant the relief sought by Trans Mountain and that the Board should refrain from making any determinations based on hypothetical denials of municipal permits.

vi) *Canada*

Canada submitted that a standing panel may be a practical way for the Board to provide procedural predictability and timely direction, thereby increasing clarity to Canadians and assisting with orderly and efficient compliance oversight.

Canada further submitted that potential future processes before a standing panel could raise matters of constitutional law and that the Board should continue to provide appropriate notice to attorneys general on a case-by-case basis.

vii) *Alberta*

Alberta submitted that the requested streamlined process is reasonable and necessary to address the critical compliance risk that Trans Mountain identified. It argued that the Board has the authority to grant the relief sought by Trans Mountain and that the Board can exercise its discretion to adjust the streamlined process as necessary to ensure notice requirements to the attorneys general are met in the event that a constitutional question arises.

E. Trans Mountain's reply submissions

In its reply, Trans Mountain submitted that the Motion does not seek to vary Certificate Condition 2, or to otherwise vary the Project or the Certificate. It argued that the Board has the authority to provide direction on compliance with Certificate conditions, including the ability to govern its own proceedings and to indicate to Trans Mountain how, or in what manner, any of the Certificate conditions may be complied with.

Trans Mountain submitted that the requested process is comprehensive and is a prudent and efficient use of the Board's resources. It argued that the proposed timelines are reasonable, given that permitting authorities are familiar with the Project and the permitting requirements, and that the majority of disputes are likely to be straightforward. Trans Mountain also stated that its Agreement with British Columbia does not prevent it from seeking regulatory relief.

Trans Mountain stated that the relief sought in the Motion would not marginalize Aboriginal groups or have any impact on constitutional obligations owed to Aboriginal groups. It stated that it is committed to meaningful consultation with Aboriginal groups.

Trans Mountain submitted that it has filed detailed evidence regarding the need for process certainty due to the critical nature of Project execution and timing. It argued that it is not required at this time to submit evidence of permitting failures for each individual permitting authority affected by the Project.

Trans Mountain argued that it is speculation as to whether future permitting matters would raise a constitutional question. It argued that the Motion itself does not raise a constitutional question and the issue of whether future motions may do so is a matter for another day.

Lastly, Trans Mountain objected to a portion of Surrey's filing, on the basis that it referred to submissions that Burnaby made in the separate MH-081-2017 proceeding. With respect to this point, Surrey filed a 4 December 2017 letter stating that it is immaterial whether referred-to Burnaby materials form part of the process to consider this Motion, as Surrey has incorporated them onto this record by reference. In a subsequent 4 December 2017 letter, Trans Mountain objected to Surrey's letter, submitting that Surrey is not afforded a right of sur-reply.

F. Views of the Board

For the reasons that follow, the Board has decided to grant the Motion in part. In Appendix 1 to this decision, the Board has set down a generic process that it will use to consider any future motions to the Board with respect to Trans Mountain's compliance with Certificate Condition 2, insofar as it relates to Trans Mountain's application for, or variance sought from, a provincial or municipal authorization or permit for the Project.

In accordance with the provisions of the NEB Act, the Chairperson of the Board will determine which Board members will hear and decide on any motion or motions filed under the generic process (for example, by way of a standing panel).

i) Trans Mountain's objection to Surrey's filing

With respect to Trans Mountain's objection to a portion of Surrey's submission on this Motion, the Board has considered Surrey's submission, including the Burnaby materials incorporated by reference, insofar as it is relevant to the general matter of future process.

ii) Future process

The Board is the master of its own procedure under the NEB Act and the *National Energy Board Rules of Practice and Procedure, 1995*, with limited statutory exceptions. The Board has the authority to establish a process to hear future applications or motions, provided that the Board's discretion to deal with those future matters is not fettered. It must always be open to the Board to

revise its processes if warranted by the specific circumstances before it; for example, to ensure that the rules of natural justice, including procedural fairness, are respected.

In this case, the Board is persuaded that setting down a generic process to hear any future motions related to Certificate Condition 2, insofar as it relates to provincial and municipal permitting issues, is in the public interest. In reaching this decision, the Board has also taken into account subsection 11(4) of the NEB Act, which requires that all applications before the Board be dealt with as expeditiously as the circumstances and considerations of fairness permit.

The Board believes that a generic process will provide a measure of certainty regarding the regulatory tools available to resolve permitting disputes or disagreements, should the relevant parties otherwise be unable to do so. The Board has taken into account the large number of permits required for the Project, and the benefits of the Project being executed in an orderly and efficient manner. In reaching its decision on this point, the Board does not require additional evidence on the likelihood of disputes arising in the future. It notes that disputes have already arisen with respect to certain municipal bylaws.² However, in any event, and as elaborated upon below, the Board expects the generic process to be rarely used. In the Board's view, the public interest in process transparency and certainty in this case is still served, even if the generic process is not ultimately triggered at all.

The Board notes that a generic process is just that – a process. It does not have the effect of changing the Project or the Certificate requirements. The Board acknowledges Katzie First Nation's concern that Indigenous groups should be engaged during regulatory permitting processes in a manner that ensures the honour of the Crown is upheld with respect to Project decision-making. In the Board's view, the generic process does not prevent this issue from being brought forward and considered in any future proceedings. The Board can also make adjustments to the process if required.

The Board wishes to be clear on its role and the role of the generic process. The generic process is not to be used for, and the Board will not serve the role of, generally supervising and directing provincial and municipal permitting processes. The Board is not an appropriate forum to work through any and all difficulties or disagreements encountered during permitting processes, and the generic process is not to be used as a negotiating tool. Rather, the Board's primary role is to ensure Trans Mountain complies with Project conditions. The Board would become involved in permitting processes only in limited circumstances; for example, where there is a lack of clarity as to whether Trans Mountain has achieved condition compliance, or where constitutional relief is requested.

The Board expects Trans Mountain and all relevant authorities to approach any permitting processes in good faith. While the Project has been determined to be in the public interest, that does not in and of itself relieve Trans Mountain from compliance with applicable provincial and municipal laws. The Board recognizes the importance of provincial and municipal permitting

² See Footnote 3 on p. 9.

processes, which can allow for ongoing and collaborative consultation on the Project and matters of local concern. The Board expects Trans Mountain to exercise good Project planning and allow sufficient time to properly engage provinces and municipalities. This includes working through issues via Technical Working Groups, as was committed to by Trans Mountain during the regulatory hearing for the Project, and which the Board addressed in various Certificate conditions.

The Board acknowledges the Agreement between British Columbia and Trans Mountain with respect to the Project. While the Board is of the view that the Agreement does not prevent Trans Mountain from seeking the regulatory relief sought in this Motion, the Board nonetheless expects Trans Mountain to attempt to work through any disagreements with British Columbia regarding provincial regulatory matters in a collaborative manner.

The Board has decided to set down the generic process in Appendix 1 to this decision. The generic process will be used to adjudicate any motion filed with the Board relating to compliance with Certificate Condition 2, insofar as it relates to Trans Mountain's commitment to apply for, or seek variance from, all provincial and municipal permits and authorizations that are required by law. For example, the generic process applies to any future motion that requests:

- a Board determination as to whether Trans Mountain has complied with Certificate Condition 2 with respect to a specific provincial or municipal permit or permits; or
- a Board Order relieving Trans Mountain from Certificate Condition 2 with respect to a provincial or municipal permit or permits.

It is open to either Trans Mountain or the relevant provincial or municipal permitting authority to trigger the generic process (in other words, to be the Applicant). The Board encourages the Applicant, where reasonable, to provide the Respondent with advance notice of the Applicant's intent to trigger the generic process, as this may increase the parties' abilities to move forward efficiently under the process.

Pursuant to the generic process, it will take approximately three to five weeks to reach a Board decision from the time a motion is filed.³ The Board retains discretion to amend the generic process as specific circumstances may require.

The process in Appendix 1 differs in some respects from the process that Trans Mountain proposed. The Board does not believe that all permitting disputes that may arise will necessarily be straightforward. Procedural fairness may require that more time be afforded under the process, compared to what Trans Mountain proposed, for the Respondent to respond to any future motion. In addition, future matters may, in many cases, engage questions of constitutional law, meaning that the timelines and process under the *Federal Courts Act* would need to be

³ In the MH-081-2017 hearing, it took approximately 5.5 weeks from the time the initial notice of motion and NCQ was filed until the Board issued its decision (with reasons to follow). For Ruling No. 40 during the OH-001-2014 hearing, it took approximately 4 weeks from the time the notice of motion and NCQ was filed until the Board issued its decision.

followed. In the Board's view, the public interest is not served by setting down a generic process that is too expedited, and which would necessitate amendment in the majority of cases.

The Board declines to include in the generic process a requirement that Trans Mountain pay expenses incurred by municipalities. The Board is not persuaded that it has the authority to do so, or that it is warranted in any event, particularly given the Board's expectation that parties work collaboratively and in good faith to resolve any disagreements or disputes prior to bringing matters before the Board.

iii) Standing panel

Trans Mountain's Motion included a request to establish a standing panel to hear any motions made under the generic process.

This Panel of three Board members considering the current Motion does not have the authority to grant Trans Mountain's request to strike a standing panel as it was specifically requested. Pursuant to subsection 6(2) of the NEB Act, it is the Chairperson of the Board (as opposed to a quorum of Board members such as this Panel) who "apportions work among the members, decides whether the Board sits in a panel, and assigns members to panels and a member to preside over each panel." To date, the Chairperson has struck several panels to hear various Project-related matters (for example, to hear this Motion, and to hear detailed routing-related matters).

In certain circumstances, the Chairperson also has the authority to assign one or more members to consider matters pursuant to sections 14 and 15 of the NEB Act. Indeed, the Chairperson has assigned a single member under section 14 to exercise all of the Board's powers with respect to condition compliance for the Project, with limited exceptions.

As new matters are brought before the Board, the Chairperson may exercise discretion in referring them to the full Board, to strike a panel, or to assign a single member, as appropriate. It may also be that a new matter falls within an existing mandate of a panel or single member (in this regard, assignments may be made on an application-specific basis, or on a standing basis).

The Chairperson's action of assigning work among Board members is largely an internal administrative matter, can happen quickly, and does not have a substantive impact on how Board decisions are made. In this case, the advance establishment of a standing panel is unlikely to materially affect how expeditiously any future motions can be addressed, particularly given the Board's decision to set down a generic process.

Accordingly, the Chairperson of the Board will determine which Board members will hear and decide any motion or motions brought under the generic process in Appendix 1. This may, in fact, be by way of a panel or a standing panel. Regardless, whomever is charged with hearing the matter will do so pursuant to the generic process, subject to their discretion to amend the process as specific circumstances may require.

iv) Conclusion

Pursuant subsection 20(1) of the NEB Act, the Board grants the Motion in part. The Board has set down a generic process in Appendix 1 to this decision that will be used to adjudicate any motion filed with the Board relating to compliance with Certificate Condition 2, insofar as it relates to Trans Mountain's commitment to apply for, or seek variance from, all provincial and municipal permits and authorizations that are required by law.

In accordance with the provisions of the NEB Act, the Chairperson of the Board will determine which Board members will hear and decide any motion or motions filed under the generic process (for example, by way of a standing panel).

Trans Mountain is directed to serve a copy of this decision, including Appendix 1, on all provincial and municipal permitting authorities for the Project, the Attorney General of Canada, all provincial attorneys general, and the additional parties listed in the schedule attached to the Motion no later than **23 January 2018**.

For any questions, please contact the Board's Process Advisory Team at 403-292-4800, toll-free at 1-800-899-1265, or by email at TMX.ProcessHelp@neb-one.gc.ca.



D. Hamilton
Presiding Member



P. Davies
Member



A. Scott
Member

Calgary, Alberta
January 2018

c.c. All interested parties that filed submissions on the Motion

Attachment

Appendix 1

Generic regulatory process Trans Mountain Expansion Project Certificate of Public Convenience and Necessity OC-064 (Certificate) Compliance with Condition 2 (for provincial and municipal permitting matters)

This generic process will be used to adjudicate any motion filed with the National Energy Board (Board) relating to compliance with Certificate Condition 2, insofar as it relates to Trans Mountain's commitment to apply for, or seek variance from, all provincial and municipal permits and authorizations that are required by law. For example, the generic process applies to any future motion that requests:

- a Board determination as to whether Trans Mountain has complied with Certificate Condition 2 with respect to a specific provincial or municipal or permit or permits; or
- a Board Order relieving Trans Mountain from Certificate Condition 2 with respect to a provincial or municipal permit or permits.

It is open to either Trans Mountain or the relevant provincial or municipal permitting authority to trigger the generic process (i.e., to be the Applicant).

The Board retains discretion to vary or amend the generic process as circumstances require.

Step	Event	Person responsible	Timing
1	File with the Board (and serve on the Respondent and, if applicable, attorneys general): <ul style="list-style-type: none"> • the motion • supporting evidence • a copy of the Board's 18 January 2018 <u>decision</u> regarding process • notice of constitutional question (if applicable) 	Applicant	n/a (triggers process)
2	File with the Board (and serve on the Applicant and, if applicable, attorneys general) the response to the motion, including supporting evidence	Respondent (if a constitutional question is raised, attorneys general may also adduce evidence)	14 calendar days after the motion is filed
3	File with the Board (and serve on the Respondent and, if applicable, attorneys general) reply, including any reply evidence	Applicant	4 calendar days after response(s) to the motion are filed

Step	Event	Person responsible	Timing
4	If applicable, file with the Board (and serve on the Applicant, Respondent, and attorneys general) written argument on the constitutional question raised	All participants	3 calendar days after the Applicant's reply is filed
5	Board decision	Board	1 to 14 calendar days after the record is closed

Below is additional detail regarding the above generic process steps. Pursuant to section 7 of the *National Energy Board Rules of Practice and Procedure, 1995*, where a deadline falls on a holiday or a Saturday, the filing may be made on the next business day.

Step 1 – File and serve the motion

To initiate this generic process, the Applicant must file with the Board and serve on the Respondent its motion, supporting evidence, and a copy of the Board's 18 January 2018 decision regarding process (including this Appendix 1).

In the event that the motion raises a constitutional question, the Applicant must also serve the documents mentioned above on the Attorney General of Canada and the attorneys general of each Province, in accordance with section 57 of the *Federal Courts Act*.

Proof of service, in the form of an Affidavit of Service, must be filed with the Board.

Step 2 – File and serve response to motion

No later than 14 calendar days after the motion is filed, the Respondent may file with the Board and serve on the Applicant (and attorneys general, if applicable) its response to the motion and any supporting evidence. Pursuant to section 57 of the *Federal Courts Act*, if a constitutional question is raised in the motion, the attorneys general are also entitled to adduce evidence.

Step 3 – File and serve reply

No later than four calendar days after response(s) to the motion are filed, the Applicant may file with the Board and serve on the Respondent (and attorneys general, if applicable) any reply and supporting evidence.

Step 4 – File and serve written argument

If the motion raises a constitutional question, all participants (Applicant, Respondent, and participating attorneys general) may file written argument on the constitutional question. No new evidence can be adduced at this stage. If the motion does not raise a constitutional question, this step does not apply.

Step 5 – Board decision

The Board will make efforts to release its decision on the motion no later than two weeks after the record closes under Steps 3 or 4, as applicable. The Board may provide its decision with reasons to follow, or provide its decision and reasons concurrently.

Filing instructions

- i) All filings made pursuant to this generic process **must** refer to File OF-Fac-Oil-T260-2013-03 03.
- ii) All filings **must** be addressed to:

Ms. Sheri Young
Secretary of the Board
National Energy Board
Suite 210, 517 Tenth Avenue SW
Calgary, AB T2R 0A8
Facsimile 403-292-5503
- iii) Acceptable methods of filing include mail, fax, courier, or the Board's online e-filing tool. For timeliness, the Board strongly encourages using the e-filing tool when filing documents. **The Board does not accept filings by email.**
- iv) If using the e-filing tool, once the link is accessed:
 - a) Follow the step-by-step instructions and guidance.
 - b) When asked to choose a project from the drop-down menu, choose "Other."
 - c) After the filing is made, you will receive an email with your filing receipt. To effect service on other participants, you may simply forward your filing receipt by email to the contacts identified in their filings.
 - d) You will also receive information regarding the requirement to provide the Board with a hard copy of your filing, and a signed filing receipt.
- v) If filing by a means other than e-filing, Board staff will upload your documents to the online public registry, once received. You may effect proper service by forwarding other participants links to your filed documents once they appear online, or electronic copies of them. If you do not have access to a computer, you may send documents to other participants by mail, fax, or courier.

All filings received regarding or pursuant to this generic process will be placed on the Board's online public registry.



File OF-Fac-Oil-T260-2013-03 03
18 January 2018

To: All parties to the MH-081-2017 proceeding

**Trans Mountain Pipeline ULC (Trans Mountain)
Trans Mountain Expansion Project (Project)
Hearing Order MH-081-2017
Notice of motion, including a notice of constitutional question (NCQ),
dated 26 October 2017 (Motion)
Reasons for Decision – National Energy Board (NEB or Board) Order MO-057-2017
dated 6 December 2017**

On 26 October 2017, Trans Mountain filed the above-referenced Motion. On 6 December 2017, the Board decided to grant the relief sought in Paragraphs 1a) and b) of the Motion, as more particularly set out in Order MO-057-2017. The Board indicated that written reasons for its decision would follow. These are the Board's reasons.

A. DEFINITIONS

The following defined terms are used in these reasons:

Certificate	Certificate of Public Convenience and Necessity <u>OC-064</u> , held by Trans Mountain as General Partner of Trans Mountain Pipeline L.P., in respect of the Project
BTE	The Burnaby Terminal Expansion, as generally described in Paragraph 8 of the Motion, and as approved by Board Order <u>XO-T260-010-2016</u> and the Certificate
BTM	The Burnaby Terminal Modifications, as generally described in Paragraph 9 of the Motion, and as approved by Board Orders <u>XO-T260-003-2017</u> and <u>MO-021-2017</u>
KB Site	The Kask Brothers Temporary Infrastructure Site, as generally described in Paragraph 11 of the Motion, and the use of which was approved by Board Order <u>XO-T260-007-2016</u> and the Certificate

.../2

WMT	The Westridge Marine Terminal expansion, as generally described in Paragraph 10 of the Motion, and as approved by the Certificate
Terminal Work	Comprises all of the BTM, BTE, KB Site, and WMT
Zoning Bylaw	City of Burnaby Bylaw No. 4742
PPA	Preliminary Plan Approval, as referred to in section 7.3 of the Zoning Bylaw
Tree Bylaw	City of Burnaby Bylaw No. 10482
Tree Cutting Permit	Tree cutting permit, as referred to in section 3 of the Tree Bylaw

B. THE MH-081-2017 PROCEEDING

The Board established the MH-081-2017 proceeding to consider the relief sought in Paragraphs 1a) and b) of the Motion.¹

Consistent with the general requirement of subsection 57(2) of the *Federal Courts Act*, after the Motion was received, the Board provided additional notice of its own to the Attorney General of Canada and the provincial attorneys general in its 3 November 2017 process letter. It set a deadline of 8 November 2017 for the attorneys general to advise if they intended to make submissions regarding the NCQ.

The parties that participated in the MH-081-2017 proceeding were Trans Mountain, the City of Burnaby (Burnaby), the Attorney General of Alberta (Alberta), the Attorney General of British Columbia (British Columbia), and the Attorney General of Saskatchewan (Saskatchewan).

In accordance with the process set out by the Board, Burnaby filed its responding submissions and evidence on 17 November 2017, and Trans Mountain filed reply evidence on 22 November 2017.

The Board set 29 November 2017 as a hearing date for Trans Mountain and Burnaby to cross-examine each other's affiants. In a letter of 31 October 2017, Burnaby had requested an opportunity to cross-examine. However, in a subsequent letter of 23 November 2017, the Board

¹ The Motion included an additional request at Paragraph 1 c), asking the Board to establish a process (and a standing panel) for Trans Mountain to bring similar future municipal or provincial permitting matters to the Board for determination. On 14 November 2017, Trans Mountain filed a separate notice of motion to this effect, which subsumed the previous Paragraph 1 c). On 15 November 2017, the Board decided to consider the two motions separately. All filings related to the process request, including the Board's decision, can be found here.

was advised that Trans Mountain and Burnaby had agreed that cross-examination on the filed affidavits was unnecessary. The Board maintained the 29 November 2017 oral hearing date for its own questioning of Trans Mountain affiants Mr. Michael Davies and Mr. Paul Wearmouth, and Burnaby affiant Mr. Lou Pelletier.

All parties filed written submissions on the constitutional questions by 24 November 2017. The Board heard oral summary argument from all parties on 4 December 2017.

C. BOARD ORDER MO-057-2017

In granting the relief sought in Paragraphs 1a) and b) of the Motion, the Board specifically ordered that:

1. Pursuant to Condition 1 of the Certificate, Trans Mountain is relieved of the requirement of Condition 2 of the Certificate, insofar as it requires Trans Mountain to obtain, with respect to the BTE, KB Site, and WMT, Preliminary Plan Approvals under section 7.3 of the City of Burnaby's Bylaw No. 4742 (Zoning Bylaw) and Tree Cutting Permits under section 3 of the City of Burnaby's Bylaw No. 10482 (Tree Bylaw).
2. Pursuant to sections 12 and 13 and paragraphs 73(c), (e), (g), and (i) of the *National Energy Board Act*:
 - a) The constitutional questions raised in the Motion are answered in the affirmative.
 - b) Section 7.3 of the Zoning Bylaw and section 3 of the Tree Bylaw do not apply to the Terminal Work.
 - c) Trans Mountain may proceed with the Terminal Work in the absence of the City of Burnaby having issued Preliminary Plan Approvals under section 7.3 of the Zoning Bylaw or Tree Cutting Permits under section 3 of the Tree Bylaw for the Terminal Work. The foregoing does not relieve Trans Mountain of any other applicable legal and regulatory requirements.
 - d) For greater certainty, the above relief does not absolve Trans Mountain from compliance with other relevant City of Burnaby Bylaws.

D. FEDERAL LAWS AND REGULATORY REQUIREMENTS

i) Regulatory review of the Project

The Project includes a twinning (or looping) of the existing Trans Mountain pipeline system (which was originally commissioned in 1953) in Alberta and British Columbia with approximately 987 kilometres of new pipeline. It also includes new and modified facilities, such as pump stations and tanks, and three new tanker berths at the WMT in Burnaby.

The entirety of the Project constitutes a "pipeline" under the NEB Act. Pursuant to the NEB Act, the Project was determined by the Board and the Governor in Council (GIC) to be in the Canadian public interest. Its construction and operation was authorized by the Certificate, along

with certain other Board orders. The Project is subject to 157 conditions relating to a range of matters, including safety, environment, consultation, and financial responsibility.

Trans Mountain submitted its application for the Project on 16 December 2013. The federal decision to authorize the Project (culminating in the issuance of the Certificate on 16 December 2016) was made after a lengthy Board hearing (OH-001-2014). Burnaby was an active participant in the hearing. It was, and is, strongly and vocally opposed to the Project. During the course of the hearing, Burnaby posed hundreds of information requests to, filed written evidence and written argument, and provided oral argument. Burnaby also brought various motions.

In 2014, Trans Mountain and Burnaby had a dispute over Burnaby municipal permitting in relation to Trans Mountain accessing city lands to conduct certain studies requested by the Board in relation to its review of the Project. In what is referred to as "Ruling No. 40," the Board found that Burnaby was attempting to use certain of its bylaws to block access by Trans Mountain to conduct the studies at issue.² On constitutional grounds, the Board ordered Burnaby to allow Trans Mountain temporary access to city lands to conduct its studies. The issues considered in Ruling No. 40 were also the subject of litigation in the British Columbia Supreme Court³ and British Columbia Court of Appeal.⁴

ii) Trans Mountain's Commitment to apply for municipal permits

The BTE, KB Site, and WMT are subject to the Certificate. Certificate Conditions 1 and 2 read as follows:

1. Condition compliance

Trans Mountain must comply with all of the Certificate conditions, unless the NEB otherwise directs.

2. Compliance with commitments

Without limiting Conditions 3, 4, and 6, Trans Mountain must implement all of the commitments it made in its Project application or to which it otherwise committed on the record of the OH-001-2014 proceeding.

In the course of the OH-001-2014 proceeding, Trans Mountain committed to apply for, or seek variance from, provincial and municipal permits and authorizations that apply to the Project. The Board summarized this commitment, which falls within the purview of Certificate Condition 2, at Page 251 of its Report, as follows:

Trans Mountain said it would apply for, or seek variance from, all permits and authorizations that are required by law, and would continue to work with all

² *Application for Trans Mountain Expansion Project (OH-001-2014)*, Board Ruling No. 40.

³ *Burnaby (City) v. Trans Mountain Pipeline ULC*, 2015 BCSC 2140 (BCSC).

⁴ *Burnaby (City) v. Trans Mountain Pipeline ULC*, 2017 BCCA 132 (BCCA).

municipalities to understand the applicability of bylaws and standards related to the construction and operation of the Project.

Also during the OH-001-2014 proceeding, Trans Mountain committed to continued engagement with affected municipalities through the formation of technical working groups (TWGs), with the stated goal being to build trust and good relationships. Certificate Condition 14 requires Trans Mountain to file with the Board, prior to commencing construction, terms of reference for established TWGs. It also requires these terms of reference to be developed in consultation with participating municipalities.

The BTM is not subject to the Certificate. This work, which proposes to modify the Burnaby Terminal to accommodate the Project, and specifically the BTE, was the subject of a subsequent application to the Board by Trans Mountain. It is authorized by Board Orders MO-021-2017 and XO-T260-003-2017, issued on 20 April 2017.

iii) Section 73 of the NEB Act

For the purposes of the Terminal Work, Trans Mountain has all of the powers set out in section 73 of the NEB Act. These include the power to:

(c) construct, lay, carry or place its pipeline across, on or under the land of any person on the located line of the pipeline;

....

(e) construct, erect and maintain all necessary and convenient roads, buildings, houses, stations, depots, wharves, docks and other structures, and construct, purchase and acquire machinery and other apparatus necessary for the construction, maintenance, operation and abandonment of its pipeline or the maintenance of its abandoned pipeline;

...

(g) alter, repair or discontinue the works mentioned in this section, or any of them, and substitute others in their stead;

.....

(i) do all other acts necessary for the construction, maintenance, operation and abandonment of its pipeline or the maintenance of its abandoned pipeline.

E. BURNABY BYLAWS

i) Zoning Bylaw

As described in further detail in Section F below, Trans Mountain sought PPAs under section 7.3 of the Zoning Bylaw for the Terminal Work. It sought separate PPAs for the KB Site, the BTM, the WMT, and the BTE.

Subsection 7.3(1) of the Zoning Bylaw states that “any person wishing to undertake a development shall apply for and receive preliminary plan approval from the Director of Planning before the issuance of a building permit or a business license...” Subsection 7.3(2) sets out the information that must accompany a PPA application, including particulars about the lot, the

applicant and/or owner, fees, the purpose of the proposed development and estimated commencement date, a preliminary plan showing a series of zoning details, and "...such further or additional land use information as the Director of Planning may require."

Pursuant to subsection 7.3(3), the Director of Planning must issue a PPA when the application conforms to the provisions of the Zoning Bylaw and does not contravene any approved land use or road plan. Subsection 7.3(5) states that "[t]he granting of preliminary plan approval shall not absolve the applicant from compliance with all relevant municipal Bylaws."

The Zoning Bylaw requires that development be set back between 5 and 30 metres from a streamside protection and enhancement area (SPEA), which is determined through an analysis of the fish-bearing status of a stream and areas near the stream containing existing vegetation or the potential for vegetation. Subsection 6.23(4) of the Zoning Bylaw prohibits developments on land within a SPEA. Subsection 6.23(3) allows for the Director Planning and Building to, with the approval of the Department of Fisheries and Oceans, vary the boundaries of a SPEA. The Zoning Bylaw's SPEA provisions are relevant to the BTE, as the Project's storage tanks and other works at the BTE coincide with a SPEA.

Subsection 6.7(1) of the Zoning Bylaw allows for temporary buildings to be erected or placed on land for construction office and construction equipment or material storage purposes, on a lot undergoing development for a period not exceeding the duration of such construction. Subsection 800.5(2) of Schedule VIII of the Zoning Bylaw requires that off-street parking that is to be shared by two or more buildings or uses be located not more than 122 metres from any building or use to be served. Subsection 6.7(3) provides that the Director Planning may grant minor variances to the siting and off-street parking requirements for a temporary building. These Zoning Bylaw provisions are relevant to the KB Site, which is a temporary infrastructure site that is further than 122 metres from the WMT, which it will support.

Pursuant to the British Columbia *Local Government Act*, Burnaby has established a Board of Variance, which may approve a variance to the Zoning Bylaw if compliance with respect to the required siting, size, or dimensions of a building or other structure would cause a person hardship.⁵

ii) Tree Bylaw

As described in further detail in Section F below, section 3 of Burnaby's Tree Bylaw requires Trans Mountain to obtain Tree Cutting Permits for each of the BTE, BTM, and WMT.

Section 3 of the Tree Bylaw states that "[e]xcept as permitted by this Bylaw, no person shall damage a protected tree and no person shall cut down a protected tree unless that person holds a valid tree cutting permit." Section 5 sets out the items that must accompany an application for a Tree Cutting Permit, including a "tree plan." Section 6 sets out the circumstances under which the Director Planning may issue a Tree Cutting Permit, including if "retention of the protected tree or trees would have the effect of preventing all uses of the land permitted."

⁵ *Local Government Act*, RSBC 2015, c 1, Part 14, Division 15.

Subsection 11(1) of the Tree Bylaw provides that every development application (which includes a PPA application) must be accompanied by a tree plan. Under paragraph 12(b), the Director of Planning may exempt a person from the tree plan requirement where he/she is “satisfied that such trees can be readily identified on the site from other information provided by the applicant.”

F. ZONING BYLAW AND TREE BYLAW PERMITTING PROCESSES

The facts relevant to the Zoning Bylaw and Tree Bylaw permitting processes for the Terminal Work can be drawn from the significant amount of emails, correspondence, and meeting minutes that Trans Mountain and Burnaby filed as evidence. While there is little material dispute between Trans Mountain and Burnaby with respect to the facts of these events, the parties differ greatly as to how the Board should interpret these events, and what inferences or conclusions the Board should draw from them.

After considering the entire record, including the affidavits of Mr. Michael Davies and Mr. Paul Wearmouth for Trans Mountain, and the affidavits of Mr. Lou Pelletier and Ms. Robyn Allan for Burnaby, the Board makes the following findings of fact with respect to the Zoning Bylaw and Tree Bylaw permitting processes for the Terminal Work.

i) TWG meetings

As noted above, Certificate Condition 14 requires Trans Mountain to file with the Board, prior to commencing construction, terms of reference for established TWGs. As contemplated by that condition, Trans Mountain initiated a TWG with Burnaby. The parties held eight TWG meetings between 15 December 2016 and 18 October 2017. Burnaby objected to these meetings even being referred to as “TWG” meetings until such time as the terms of reference for the TWG were formalized (which did not occur until September 2017). For the sake of the discussion that follows, the Board assumes all eight meetings between Trans Mountain and Burnaby to have been TWG meetings, and refers to them as such throughout these reasons.

The first TWG meeting was relatively exploratory and high-level in nature. The TWG’s terms of reference were still under development, and there appears to have been a lack of a concerted effort on the part of both Trans Mountain and Burnaby to meaningfully engage or make any significant progress in late 2016, which carried over to early 2017.

The TWG meetings became more regular (roughly once a month) and detailed starting in April 2017. Both the written record and the *viva voce* testimony of Trans Mountain’s witnesses make it clear that Trans Mountain expected the TWG process to be used to, among other things, work through issues related to Burnaby permitting matters. More precisely, it appears that Trans Mountain believed the TWG would be the primary forum in which its permitting applications would be reviewed and guidance would be given.

Although Burnaby made some statements to the effect that the TWG could be used to work through permitting issues, there was no clear commitment on Burnaby’s part that this would be the case. Very little progress was made in TWG meetings to advance Trans Mountain’s PPA applications. This is despite the fact that Burnaby regularly had senior staff attend the TWG

meetings. The process and status of permitting matters was discussed at TWG meetings, and occasionally specific issues were discussed; however, the record demonstrates that Burnaby's position was that the PPA applications would ultimately be dealt with outside the TWG, through Burnaby's formal permitting process.

The record shows some early reluctance on Trans Mountain's part to commit to going through the formal municipal permitting process, initially suggesting that it would file "packages" demonstrating compliance with applicable municipal bylaws. However, as per Burnaby's requirements, Trans Mountain did ultimately formally file its four PPA applications. From that point on (June 2017), Trans Mountain appeared committed to complying with the formal application review process. At the same time, Trans Mountain continued to attempt to make the TWG an effective forum for working through permitting issues.

Ultimately, in the Board's view, the evidence demonstrates that Trans Mountain was unable to rely on the TWG as a meaningful or effective forum for resolving or clarifying outstanding issues related to the PPA applications and Tree Cutting Permits, and that Burnaby did not use the TWG as a means of making its approval process more efficient or accessible to Trans Mountain.

ii) The PPA application process

There is some dispute between Trans Mountain and Burnaby regarding when the four PPA applications were formally filed with Burnaby, and specifically whether this occurred in late May 2017, when certain initial filings were made, or later in June 2017, when some filings were re-submitted with additional information required by Burnaby.

Regardless, once the PPA applications had in fact been filed as required in June 2017, Trans Mountain repeatedly asked for Burnaby's expected timing to complete its processing of them. Burnaby was non-committal in its responses. For example, in July 2017, it informed Trans Mountain that its timeline for processing PPA applications was three to four weeks for a simple application and six to eight weeks for a more complex review, although the "Tank Farm application" would take a bit longer. However, Burnaby later suggested that there were no standard timelines. Burnaby also indicated that Trans Mountain's PPA applications would take longer due to project complexity, and the fact that the Burnaby Terminal was "different."

Burnaby was also not clear with Trans Mountain about which of the four PPA applications was under review at any given time, and when any review officially started. It is unclear whether Burnaby's review started when the PPA applications were initially filed, or at some later date when Burnaby considered the PPA applications to be sufficiently complete and/or were formally accepted by Burnaby. The parties proceeded on the basis that the BTM was the priority PPA application; however, it was unclear whether or not the other three PPAs were also under review. At times, Burnaby indicated that it was also reviewing the other three PPA applications and that all four had been referred to several Burnaby departments for review. Burnaby also indicated that it did not have the resources to process all PPA applications simultaneously.

Burnaby stated that its preferred process for reviewing PPA applications is to send all comments to the applicant as a single package. Indeed, in July 2017, Burnaby told Trans Mountain that it

did not want to send out piecemeal comments, and intended to bring together a compilation of comments on the BTM PPA application within two weeks so that Trans Mountain would have a complete package. However, this is not what occurred.

On more than one occasion, Burnaby told Trans Mountain to expect comments on its PPA applications in a matter of weeks, or in the near future. Either these comments did not materialize on the indicated timeline, and/or they were provided in a partial or piecemeal fashion, without clear direction or context as to where they fit in the overall permitting process. As an example of the latter, separate comments from different Burnaby departments in relation to various PPA applications were provided to Trans Mountain on 9 and 14 August; 6, 8, 14, 18, and 28 September; and 19 October 2017.

It was also not always clear if comments provided to Trans Mountain related to the Zoning Bylaw or to another Burnaby bylaw. In response to Board questions, Burnaby clarified during the course of this hearing that some of the additional information it requested from Trans Mountain – related to traffic and sediment control – fell under other Burnaby bylaws.

In the Board's view, Trans Mountain made reasonable efforts to respond to Burnaby's comments and requests for additional information and has, in fact, provided the bulk of this information to Burnaby. While some information that Burnaby requested in relation to the PPA applications is outstanding, the Board accepts that Trans Mountain was not in a position to practically or efficiently provide this information in the absence of additional guidance from Burnaby. This is particularly the case as it related to zoning matters (comments on the WMT and BTE remain outstanding; comments for the BTM and KB Site were not received until 9 August and 26 October 2017, respectively). Burnaby was also not clear with Trans Mountain (prior to the Motion being heard) about what specific information was outstanding. Other information requested by Burnaby – such as ecological assessment reports – was not anticipated by Trans Mountain in the context of a Zoning Bylaw review. These requests came from Burnaby late in the process, and required considerable work to prepare.

The Board is not persuaded that the evidence supports Burnaby's argument that Trans Mountain never tried to comply with its PPA application process and was setting it up for failure. On the contrary, the Board finds that Trans Mountain's reasonable requests to allow it to reach PPA application compliance in an efficient manner were continually rebuffed by Burnaby.

Despite Trans Mountain's multiple requests, Burnaby would not facilitate a meeting between Trans Mountain and the technical staff reviewing the PPA applications. Burnaby initially indicated that meetings could be set up with staff for clarification of the PPA process or for processing PPA applications. However, in September 2017, when Trans Mountain specifically requested that such meetings be set up on a regular basis, Burnaby's Deputy Director of Engineering responded to Trans Mountain in writing, advising that there is no such "permit review team," and that direct contact with individual employees can only lead to delays. Trans Mountain was told that it must work through the PPA application coordinator for the Project and that it has access to senior staff through the TWG. The Board finds this position taken by Burnaby to be disingenuous. Burnaby did not use the TWG as a means of making its approval process more efficient or accessible to Trans Mountain. At the same time, Burnaby

made its technical staff reviewing the permitting applications largely inaccessible to the company.

Trans Mountain made several clearly worded requests to Burnaby in an attempt to clarify the PPA application process. These included requests for a list of Burnaby departments reviewing the PPA applications, how many departments had completed reviews, the likely timeline for comments on each application, the likely timeline for the full process, any additional information that was required, and what Trans Mountain could do to facilitate a more efficient process. These questions were not clearly or consistently answered and, in some cases, were not answered at all.

In oral final argument, Burnaby took the position that the cause of delay in processing the PPA applications was due largely to Trans Mountain's incompetence or ineptness in submitting its applications. The Board finds that the evidence does not support this argument. The Board accepts that Trans Mountain's initial PPA applications lacked some necessary information; however, the applications were re-submitted in June 2017. After that point, Burnaby did, at times, indicate that PPA application completeness was still a concern. However, at other times, Burnaby cites the Project's complexity or the fact that Burnaby has many other PPA applications under review as being reasons for the delay. Even if it were true that significant material was still lacking after June 2017, there was no clear, consistent, or meaningful effort on Burnaby's part to make it known to Trans Mountain what was specifically required to complete its applications.

Regarding Burnaby's project complexity argument, there is no doubt that the Project as a whole is complex. However, based on the evidence on the record, the Board is not persuaded that the four specific PPA applications at issue were comparatively or materially more complex than other PPA applications Burnaby has considered (in one 18 September 2017 letter from Burnaby, it responded to Trans Mountain's questions about delay by referring to its many applications, including from "larger" projects). Burnaby also has a significant degree of familiarity with the Project, owing to its previous participation in the Board's OH-001-2014 proceeding. Each of the BTM, BTE, and WMT are expansions or modifications of existing facilities, the operation of which are known to Burnaby. Trans Mountain led evidence to the effect that the PPA applications were relatively straightforward. The Board also notes the preliminary nature of a PPA, and that the Zoning Bylaw is clear that the issuance of a PPA does not absolve the applicant of compliance with all other Burnaby bylaw requirements.

As of the date that the Motion was filed, Burnaby had not made a decision on any of Trans Mountain's four PPA applications. On 21 November 2017, Burnaby informed Trans Mountain that it would not continue to process the PPA applications while the Motion was before the Board.

iii) The Tree Cutting Permit process

The Tree Cutting Permit process is closely intertwined with the PPA application process. Trans Mountain included Tree Management Plans in support of its PPA applications for the BTM, BTE, and WMT. Those plans proposed to use a "timber cruise method" to estimate the number of trees to be removed. On 9 August 2017, Burnaby indicated to Trans Mountain that the timber cruise method was not acceptable under the Tree Bylaw because it is not a survey plan showing the location and diameter of each protected tree to be removed, it does not include the

location of all replacement trees, and each protected tree is not proposed to be tagged with an identification number.

On 1 September 2017 (for the BTM) and 6 October 2017 (for the WMT and BTE), Trans Mountain requested that the Director of Planning grant an exemption pursuant to paragraph 12(b) of the Tree Bylaw to allow for the use of the timber cruise method, which would then subsequently be validated by having a qualified environmental professional on site to count all trees removed. Trans Mountain submitted that the area of tree coverage makes it impractical to survey each protected tree location or to tag individual trees. It argued that the timber cruise method is commonly used in the forest industry and may provide a reasonably accurate estimate of the number of trees to be removed. It indicated that it would comply with any reasonable conditions attached to a Tree Cutting Permit, including related to the provision of security for the cost of replacement trees.

In its evidence, Trans Mountain estimated that 1502, 2220, and 275 protected trees would be removed from the BTM, BTE, and WMT, respectively. During questioning, Trans Mountain's witness, Mr. Wearmouth, indicated that, at each of these sites, all of the trees would be cleared from the areas in question.

On 10 October 2017, the Director of Planning refused Trans Mountain's exemption request, stating that he did not find a supportable basis for the variance. No other reasons were provided. Burnaby has not yet issued Tree Cutting Permits for the BTE, BTM, or WMT.

On 14 November 2017, Trans Mountain submitted a complete Tree Management Plan for the BTM that does not rely on the timber cruise methodology.

iv) Political interference and intent to delay

When it filed the Motion, Trans Mountain led evidence that, it argued, demonstrated an intent on Burnaby's behalf to "do everything it can to frustrate the Project." Trans Mountain went so far as to allege that Burnaby's Mayor believed that the permitting process was a legitimate method of slowing down the Project. Burnaby strongly objected to Trans Mountain's assertions of improper motives on Burnaby's behalf and led evidence to the effect that there was no political interference in its permitting processes.

In the Board's view, the issue of alleged political interference or improper motives may be relevant, but is not particularly material to its consideration of this Motion. Establishment of mal intent or bad faith is not, in the Board's view, a prerequisite to granting the relief sought. Regardless, the Board discusses it here as it was debated at some length between the parties.

The Board accepts that Burnaby is fundamentally opposed to the Project, and that it has been public, vocal, and consistent in its opposition. This was and is well within Burnaby's rights as an affected landowner, municipality, and as a hearing participant. However (and as was ultimately conceded by Trans Mountain), there is no direct evidence on the record that there has been political interference in the PPA application and Tree Cutting Permit processes, or that Burnaby, as a regulator, intentionally used those processes as a means to improperly delay the Project.

Burnaby told Trans Mountain on several occasions that ongoing litigation between the parties, and Burnaby's opposition to the Project, would not interfere with the technical permitting process. The Board accepts this to generally be the case.

That being said, the record shows that the relationship between Trans Mountain and Burnaby is acrimonious and, at times, litigious. The tone of some of the written correspondence between the parties during the course of the permitting process is one of adversaries or litigants, as opposed to that of regulator and regulated company. This is of concern to the Board, particularly on Burnaby's part, which is a regulator in this context. In the Board's view, the parties' negative relationship, and the overall climate of Burnaby's public opposition to the Project, may have had a general chilling effect on Burnaby's ability or willingness to work efficiently and cooperatively with Trans Mountain. This is despite the fact that there was no direct political interference. The Board notes that the review timeline has been much longer than Burnaby's initial estimate of six to eight weeks for a more complex application. Comments on the PPA applications were also provided in a partial or piecemeal fashion, which is inconsistent with Burnaby's preferred practice of providing consolidated comments. However, this evidence does not rise to the level of establishing bad faith on behalf of Burnaby. Further, as the Board indicates above, it does not find the issue of alleged political interference or improper motives to be particularly material to its consideration of this Motion in this particular case.

v) Project delay, prejudice, and the public interest

Trans Mountain's construction schedule (filed with the Board on 1 November 2017) identifies an unmitigated Project in-service date of September 2020. Trans Mountain has indicated that the relief sought in this Motion is one mitigation measure to enable the timely completion of the Project.

At the time Board Order MO-057-2017 was issued, the outstanding PPA and Tree Cutting Permit for the BTM were all that prevented Trans Mountain from commencing that work. While the PPA for the KB Site, and the PPA and Tree Cutting Permits for the BTE and WMT, may not have been the only things preventing Trans Mountain from commencing those works, the Board accepts that the outstanding PPAs and Tree Cutting Permits are a direct, contributing, and exacerbating factor to construction delay. The Board accepts Trans Mountain's evidence that these are the only outstanding applicable regulatory requirements for which it is unable to reasonably foresee a completion date.

The Board also accepts that there will be serious prejudice to Trans Mountain if the Project is delayed to or beyond its current unmitigated in-service date, including the direct financial harm cited by Trans Mountain in the range of \$30-35 million per month. The Board accepts Trans Mountain's evidence that a delay of an indeterminate nature could result in cancellation of the Project as a whole.

In the Board's view, certain evidence on the record, and particularly portions of the affidavit of Ms. Robyn Allan, appeared to constitute an attempt to revisit issues related to the benefits of the Project. In its May 2016 Report, the Board conducted an extensive review of the Project's benefits, including considerable benefits associated with market diversification, jobs,

competition among pipelines, and government revenues. The Board's recommendation in this regard was accepted by GIC, who directed the Board to issue the Certificate. The Board is not prepared to debate and revisit those findings in the context of this Motion, nor would it be appropriate to do so. It is a fact that the Project has been found by the Board and GIC to be in the Canadian public interest under the NEB Act, with the overall benefits of the Project outweighing the residual burdens. To the extent Ms. Allan's evidence spoke to the reasons for Project delay and the potential harm, or lack thereof, associated with Project delay, the Board did not find it persuasive.

vi) Summary of the Board's views on the permitting processes

In considering this Motion, including the underlying facts, the Board did not engage in an exercise of assessing whether each and every detail and action on Burnaby's part was justified. In this regard, it is not the Board's role to dictate to Burnaby the specifics of the process it must use for its own municipal permitting. The Board also agrees with Burnaby that reasonable regulatory processes should not be characterized as "delay." Rather, the Board has assessed the facts on this Motion only with a relatively limited view to considering the relief sought related to Certificate Condition 2 and the constitution. With that general premise stated, the Board draws the following conclusions.

The Project has been lawfully approved to proceed and has already undergone extensive federal review. In this overall context, the Board would have expected to see, in general, reasonable efforts on Burnaby's part to work efficiently and cooperatively with Trans Mountain in order to help ensure that when (not if) the Project proceeds, matters of local concern that are reflected in Burnaby's bylaw requirements are understood and addressed to the extent possible. In the Board's view, this, for the most part, did not occur.

The Board finds that the majority of the delay incurred since Trans Mountain filed its PPA applications is attributable to Burnaby's actions or inaction. Viewed as a whole, Burnaby's review process was unclear, inefficient, and uncoordinated. Burnaby gave inconsistent direction to Trans Mountain, and its words were often inconsistent with its actions, giving rise to confusion. While there was certainly no lack of correspondence and activity between Trans Mountain and Burnaby, the parties often seemed to be talking past each other. While there was an earnest effort on Trans Mountain's part to resolve matters, the Board is of the view that a similar effort was largely absent on Burnaby's part.

While Burnaby is not legally required to use the TWG to deal with municipal permitting matters, had Burnaby put it to more productive use, the TWG could have operated as a collaborative and flexible forum to efficiently resolve issues. Overall, the permitting process to which Trans Mountain was subject was confusing, and made it very difficult for Trans Mountain to discern or receive simple guidance about what the permitting requirements were and how they could be met, which the Board finds to have contributed to unreasonable delay.

The Board concludes that Burnaby's process to review the PPA applications and associated Tree Cutting Permits was not reasonable. The Board has reached this conclusion within the

context of the fact that the Project has been federally approved to proceed, after a lengthy review, and it is not open to Burnaby to stop it (as discussed further in Section H below). The Board has considered all of the circumstances, not just the length of the delay alone. These circumstances are described above and can be summarized as:

- the review time was two to three times longer than Burnaby's original estimate of six to eight weeks for a more complex review;
- the responsibility for the majority of review time is attributable to Burnaby's actions, inactions, and process decisions;
- Burnaby's process made it very difficult for Trans Mountain to understand what the permitting requirements were and how they could be met;
- Burnaby repeatedly denied Trans Mountain's reasonable requests to aid in an efficient processing of the PPA applications;
- the review time is the cause of, or a contributing or exacerbating factor to, Project construction delay, and the prejudice associated with that delay; and,
- the overall trend does not indicate that Burnaby is getting closer to issuing PPAs or Tree Cutting Permits; rather, there is no clear indication of an imminent resolution.

With respect to the last bullet above, it ultimately remains unclear to the Board what additional steps (informational and process-related) are or would be required or added by Burnaby to complete its permitting processes. When Board counsel asked Burnaby's witness, Mr. Lou Pelletier, to identify the remaining PPA application deficiencies, Burnaby's counsel objected.

The Board has reached the above conclusions about the reasonableness of Burnaby's process, regardless of the fact that there was no direct evidence of political interference.

G. RELIEF FROM CERTIFICATE CONDITION 2

By virtue of Certificate Condition 2, it is currently a federal regulatory requirement that Trans Mountain obtain – with respect to the BTE, KB Site, and WMT – PPAs under section 7.3 of the Zoning Bylaw and Tree Cutting Permits under section 3 of the Tree Bylaw. Trans Mountain has asked that the Board relieve it from these requirements pursuant to Certificate Condition 1.

i) Trans Mountain's submissions

Trans Mountain noted that Certificate Condition 1 requires compliance with all conditions “unless the Board otherwise directs.” Trans Mountain argued that this gives the Board flexibility in enforcing condition requirements, and that use of Condition 1 does not constitute a variance of the Certificate that would require GIC approval under section 21 of the NEB Act.

Trans Mountain argued that relief from Certificate Condition 2 is justified on the basis that it has made best efforts to obtain permits related to the Terminal Work, that Burnaby has not offered any reasonable basis for the permitting delay, and that Burnaby is using its municipal bylaws to stop a federal work and undertaking.

ii) Burnaby's submissions

Burnaby submitted that Trans Mountain is required to obtain PPAs and Tree Cutting Permits as a matter of federal law, pursuant to Certificate Condition 2, and that the GIC approved the Project on the basis that Trans Mountain would comply with all of the conditions. Burnaby also noted Trans Mountain's direct commitment to the City that it would comply with Burnaby's permitting processes.

Burnaby submitted that undertaking a Project of such magnitude in a densely populated municipality requires municipal regulation. It submitted that Trans Mountain now seeks to avoid its obligations under the Certificate, but to still take the benefit of the Project. Burnaby argued that Trans Mountain is effectively seeking relief from going through the permitting process that applies to all other project proponents within Burnaby, and that the Board should not condone this behavior.

iii) Attorneys general submissions

Alberta supported Trans Mountain's request for relief from Certificate Condition 2, and agreed with Trans Mountain that the Board has jurisdiction to grant the relief under Certificate Condition 1. Alberta submitted that, should the Board make a finding of unacceptable delay, regardless of reason, the Board can and should grant the relief sought.

British Columbia did not comment specifically on this issue.

Saskatchewan did not make any submissions on the merits of this issue; however, it did note that Condition 2 currently has the effect of incorporating the municipal requirements into the Certificate under federal law.

iv) Views of the Board

The Board is of the view that it is in the public interest to grant Trans Mountain the requested relief from Certificate Condition 2. The Board has reached this conclusion on the basis of its conclusion in Section F that Burnaby's process to review the PPA applications and associated Tree Cutting Permits, and its execution of those processes, were not reasonable, resulting in unreasonable delay. This includes the fact that it is the cause of, or a significant contributing or exacerbating factor to, Project construction delay.

The Board accepts that there is public interest in ongoing, collaborative engagement between Trans Mountain and municipalities, such that matters of local concern are understood and addressed where possible. This includes complying with lawful municipal permitting processes. The Board also accepts that municipal permitting processes do not happen overnight, and will reasonably take time to complete. What is reasonable is necessarily fact-specific and must be considered in light of all of the circumstances.

In this specific case, the Board finds that the public interest in granting the relief sought outweighs any public interest in requiring Trans Mountain to continue with the Burnaby PPA

application and Tree Cutting Permit processes. The Board finds the PPA and Tree Cutting Permit processes to have been unreasonable and that there is no clear indication of an imminent solution, which are having the effect of conflicting with Trans Mountain's statutory powers under section 73 of the NEB Act, as well as the Certificate and other Board orders authorizing the Project (as discussed in more detail in Section H). The Board also notes the preliminary nature of a PPA, and that the relief sought is limited in nature in that it does not absolve Trans Mountain from complying with all other applicable Burnaby bylaws.

In addition, the Board notes that Trans Mountain has made certain commitments in the course of this Motion, for example, to pay compensation or replant in accordance with the Tree Bylaw.

Further, all of Trans Mountain's actions are subject to section 75 of the NEB Act, which requires the company to do "as little damage as possible" in exercising its powers under section 73 of the NEB Act. Compensation for damage is available under the NEB Act.

The Board grants this relief pursuant to Certificate Condition 1, which does not require GIC approval. The Board described the intent of Condition 1 at Page 118 of its Report on the Project:

The intent of the phrase "unless the NEB otherwise directs" in Condition 1 is to provide the Board with some flexibility to vary conditions in a timely manner, if needed, without requiring [GIC] approval. Changes would be considered by the Board on a case-by-case basis, within the context of the conceptual design presented by Trans Mountain in its application and the hearing, the associated level of safety and environmental protection, and the recommendation and decisions of the Board and [GIC]. More substantial changes to the Project would require a variance pursuant to section 21 of the NEB act, and variance of a Certificate would not be effective until approved by [GIC].

In this case, no changes are required to the Certificate itself. The Board disagrees with Burnaby that this relief will allow a significant or substantial change to be made to the Project. The Board notes that the GIC directed the issuance of the Certificate for the Project, including the phrase "unless the Board otherwise directs."

Trans Mountain suggested that the Board impose three conditions in granting the requested relief. The suggested conditions were detailed and would have had the effect of substituting the Board for the municipal regulator. For example, Trans Mountain proposed to provide the Board with development drawings and Tree Management Plans, similar to what the Zoning and Tree Bylaws require. The Board is of the view that this is inappropriate. The Board is not a municipal regulator and is not prepared to replace municipalities in terms of overseeing and enforcing very specific municipal requirements.

H. CONSTITUTIONAL QUESTIONS

The Motion raises the following constitutional issues:

1. Does the Board have the legal authority to determine that Burnaby's specific bylaws that require Trans Mountain to obtain PPAs and Tree Cutting Permits for the Terminal Work

are inapplicable, invalid, or inoperative in the context of Trans Mountain's exercise of its powers under section 73 of the NEB Act?

2. If so, on the facts before the Board, should the Board find that the requirement for municipal approvals under section 7.3 of Burnaby's Zoning Bylaw and section 3 of the Tree Bylaw prior to conducting the Terminal Work are inapplicable, invalid, or inoperative under the doctrines of interjurisdictional immunity and/or federal paramountcy?

In Order MO-057-2017, the Board answered both of these questions in the affirmative.

i) Trans Mountain's submissions

Regarding the first constitutional question, Trans Mountain relied on the Board's previous Ruling No. 40, made in the course of the OH-001-2014 proceeding (which was confirmed in *Burnaby (City) v. Trans Mountain Pipeline ULC* where Macintosh J. determined that the Board had jurisdiction to address such questions).⁶

Trans Mountain argued that the Project is a federal undertaking and that the province and, by extension, municipalities cannot decline to issue permits required for the Project. Trans Mountain submitted that unreasonable delay, which could continue into perpetuity, amounts to an outright refusal and is unconstitutional.

Trans Mountain submitted that Burnaby's delay triggers interjurisdictional immunity. It stated that Burnaby's delay substantially impairs the core of the federal government's exclusive power over the matters of when and where the Project is built, and the Project's orderly development and efficient operation. Trans Mountain submitted that, if left unchecked, Burnaby's inaction may prevent the construction of the Project entirely.

Trans Mountain submitted that paramountcy also applies. It argued that there is a clear federal purpose that interprovincial projects that have been determined to be in the Canadian public interest be assessed and approved on a timely basis. Trans Mountain argued that the Project's timing was a part of the public interest determination, and that Burnaby's inaction flouts the federal purpose.

Trans Mountain submitted that delay on its own, regardless of motive, is sufficient to trigger both interjurisdictional immunity and paramountcy. It also argued that it would be illogical to require Trans Mountain to wait for a denial of a permit from Burnaby before seeking constitutional relief.

Further, or in the alternative, Trans Mountain argued that there is a conflict on the face of the Zoning and Tree Bylaws, and the federal Project approvals. With respect to the BTM, BTE, and WMT, Trans Mountain argued that the Tree Bylaw requires the Director of Planning to exercise

⁶*Burnaby (City) v. Trans Mountain Pipeline*, *supra* notes 3 and 4.

discretion to grant a Tree Cutting Permit, and that the possibility of a negative decision creates an operational conflict.

With respect to the BTE, Trans Mountain argued that the Board-approved location of storage tanks and related works coincides with a SPEA, which is prohibited under the Zoning Bylaw. It stated that the criteria to be used to assess whether a variance to the SPEA should be granted does not appear to consider giving effect to a federal approval.

With respect to the KB Site, Trans Mountain argued that the Board-approved temporary infrastructure site, which consists of a standalone worksite to be used solely on a temporary basis and which includes parking facilities more than 122 metres from the WMT, is not permitted under the Zoning Bylaw. Trans Mountain submitted that it is not clear whether its circumstances qualify as “hardship” that would justify a Burnaby Board of Variance decision to vary the Zoning Bylaw requirements.

Trans Mountain submitted that, under both doctrines of interjurisdictional immunity and paramountcy, Burnaby is precluded from seeking to apply its bylaws so as to impede or block any steps that Trans Mountain must take in order to prepare and locate the Project.

Trans Mountain argued that the principle of cooperative federalism does not apply in this case as a ground to deny the constitutional relief sought, given Burnaby’s failure to fairly and efficiently administer its bylaws. Trans Mountain submitted that it is not seeking to escape its obligations – it has engaged in the Burnaby process in good faith and has fulfilled the spirit and intent of its commitment to obtain municipal permits. It argued that frustrating a federal undertaking through the administration of municipal bylaws is the antithesis of cooperative federalism.

ii) Burnaby’s submissions

Burnaby submitted that there is no provincial/federal conflict or constitutional question that arises unless and until there is a variance to Certificate Condition 2. It argued that, if a variance were to occur, a constitutional issue of conflict would not exist unless Burnaby issues a negative decision on either the Zoning or Tree Bylaw that impairs the core of a federal undertaking, and Burnaby attempts to enforce its bylaws directly in a manner that impedes construction or operation of the interprovincial undertaking or otherwise conflicts with the NEB Act. Burnaby argued that both of these steps have not happened in this case, and may never happen. It asserted that the Board should not rule now on what is a hypothetical issue.

In terms of the Board’s authority to decide the constitutional questions raised in the Motion, Burnaby cited *Windsor (City) v. Canadian Transit Co.*,⁷ which it says stands for the proposition that, just because a dispute involves a federal undertaking, does not mean that the jurisdiction of a Federal Court is engaged. Burnaby submitted that this case is different from the Board’s decision in Ruling No. 40, in that Burnaby has yet to make a determination with respect to bylaw compliance and has not blocked Trans Mountain from undertaking Project work. It argued that,

⁷ *Windsor (City) v. Canadian Transit Co.*, 2016 SCC 54.

in simply assessing a permit application and applying bylaws, it is not doing or continuing any act contrary to the NEB Act or the Certificate.

Burnaby submitted that provincial law has a role to play in regulating the Project and that, in furtherance of cooperative federalism, the operation of the laws of both levels of government should be favored where possible. Burnaby argued that, while a provincial authority cannot refuse to allow a federal undertaking to proceed, it does have the jurisdiction to impose conditions. It submitted that granting the relief sought would leave local matters unprotected and would effectively require the Board to interpose itself as a municipal regulator.

It is Burnaby's position that paramountcy is not engaged. It argued that a mere overlap or duplication of regulation does not amount to a conflict, even if the provincial law is more restrictive than the federal law. Burnaby submitted that there is no impossibility of dual compliance. The Tree Bylaw provides for the ability to remove trees in circumstances that could reasonably be interpreted to apply to the PPA applications. Similarly, Trans Mountain could apply for a variance of the SPEA under the Zoning Bylaw. In terms of the KB Site, Burnaby submitted that minor variances to the siting and off-street parking requirements can be granted, but stated that Trans Mountain has provided no evidence that the only available site is the KB Site. Burnaby also argued that its bylaws do not frustrate the federal approval or purpose, as that approval expressly contemplated that Trans Mountain would work cooperatively with municipalities and comply with their bylaws.

Burnaby submitted that interjurisdictional immunity is similarly not engaged, and cautioned that its use should be limited and restricted to situations covered by precedent, noting that the trend of constitutional interpretation does not favour its use in an era of cooperative federalism. Burnaby argued that it cannot be said that conditions that require replacement or compensation for lost trees or streams, or obligations to meet fencing and parking rules, go to the "core" of a federal undertaking.

Burnaby submitted that it is not enough to establish that potential decisions under its bylaws could impact aspects of the Project. It stated that Trans Mountain's arguments are purely hypothetical. Burnaby submitted that, without any decision under the bylaws, there is no factual basis to determine whether a vital aspect of the undertaking is impaired.

iii) Attorneys general submissions

a) Alberta

Alberta supported the constitutional relief sought by Trans Mountain. It argued that abuse of discretion or unreasonable delay can be a serious obstacle to Project completion; it is not a hypothetical question.

Alberta agreed with Trans Mountain's submissions on paramountcy, arguing that the existence of a discretionary process, such as an exemption application process to potentially get around an express conflict in the bylaws, is not enough to displace an operational conflict. Alberta also

argued that the bylaws frustrate the siting and location aspects of the Project, and that Burnaby's unreasonable delay also frustrates that purpose.

Alberta also agreed with Trans Mountain's submissions on interjurisdictional immunity, although it submitted that this doctrine should only be considered if the Board has not found a conflict under the paramountcy doctrine. Alberta argued that allowing a province or municipality to impose unreasonable requirements or to delay issuing permits allows it to impair the core of a federal authority. It argued that Burnaby is improperly exercising control over whether and when the Project will proceed.

b) British Columbia

British Columbia submitted that the Board is empowered to decide constitutional questions, but should only do so when the question arises squarely on the facts established by the evidence. It argued that, if the Board is not satisfied, as a matter of fact, that Burnaby is deliberately attempting to thwart the Terminal Work through permitting processes under municipal bylaws, then it is not necessary to proceed with the constitutional analysis.

British Columbia submitted that, if the Board does decide to carry out the analysis, it should undertake it within the context of cooperative federalism. It noted that, if provincial and federal laws can generally function without operational conflict, they should be permitted to do so.

In terms of interjurisdictional immunity, British Columbia noted that the doctrine operates to protect the "essential and vital" elements of a federal undertaking, or those elements which are "absolutely indispensable or necessary" to it. It noted that "impairment" of an undertaking is a midpoint between sterilization and mere effects. British Columbia submitted that the doctrine should be applied with restraint.

British Columbia argued that no authority has been presented for the proposition that the regulation of tree removal, or stream mitigation measures, have been recognized as falling within the core of the federal legislative jurisdiction over interprovincial pipelines. It similarly argued that there was no authority for the proposition that construction of the facilities associated with an interprovincial pipeline lie within the core of the federal jurisdiction, either.

In terms of paramountcy, British Columbia submitted that the standard is high, and the doctrine should be applied with restraint. British Columbia argued that it is premature to make a finding of paramountcy because there is no operational conflict between the NEB Act and the bylaws before Burnaby makes a decision, or rejects the permitting applications; a position that was similarly argued by Burnaby.

c) Saskatchewan

Saskatchewan submitted that the doctrine of paramountcy is engaged because the Zoning and Tree Bylaws conflict operationally with the Certificate, and they also frustrate the purpose of the federal law.

With respect to the former, Saskatchewan argued that an operational conflict is created because the authority from the Board becomes subject to alteration and negation by the operation of the bylaws. With respect to the latter, Saskatchewan submitted that the Board and Cabinet have determined that the Project is in the broader public interest, and if the application of the bylaws to the Project would instead substitute the views of Burnaby, this would frustrate the conclusions of the Board and Cabinet.

Saskatchewan submitted that the Motion is not premature. It argued that a discretionary delay in issuing permits can itself be an operational conflict and frustration of a federal purpose.

In Saskatchewan's view, it is not necessary to consider interjurisdictional immunity given the conclusions on paramountcy.

iv) Views of the Board

a) Authority of the Board to decide the constitutional questions

The Board has the authority to consider constitutional questions relating to its own jurisdiction and this Motion raises such a question.⁸ Project construction and operation, including the Terminal Work, has been lawfully approved by the Certificate and certain other Board orders issued under the NEB Act. As a result, and for the purposes of the Terminal Work, Trans Mountain has all of the powers set out in section 73 of the NEB Act, including the ability to take all actions necessary for the Project's construction and operation. The Board has the authority to consider whether Burnaby's application of the Zoning and Tree Bylaws is contrary to, or is in conflict with, section 73 of the NEB Act, the Certificate, and relevant Board orders.

The NEB Act provides that the Board is a court of record. Under sections 12 and 13, the Board has broad discretion to inquire into, hear, and determine matters, and to provide a remedy, where it appears to the Board that any person has or is doing something contrary to the NEB Act. Subsection 12(2) of the NEB Act expressly gives the Board "full jurisdiction to hear and determine all matters, whether of law or fact."

The BTE, WMT, and KB Site are subject to the Certificate. In the Board's view, where provincial or municipal permitting has been incorporated into a federal approval (as is the case in Certificate Condition 2), there can be no federal/provincial conflict or constitutional question to be addressed with respect to that permitting. However, given that the Board has decided in Section G that relief should be granted from Condition 2 in this specific case, the constitutional questions raised in the Motion are rightly before the Board for consideration.

⁸ *Cooper v. Canada (Human Rights Commission)*, [1996] 3 S.C.R. 854; and *Cuddy Chicks Ltd. v. Ontario (Labour Relations Board)*, [1991] 2 S.C.R. 5; and Ruling No. 40, *supra* note 2 discussed in *Burnaby (City) v. Trans Mountain Pipeline ULC*, *supra* notes 3 and 4.

b) *General validity of the Zoning and Tree Bylaws*

The Board is of the view, and notes that there is no dispute, that the Zoning and Tree Bylaws are validly enacted pursuant to provincial legislation falling within the constitutional legislative authority of British Columbia. These bylaws are of general application within Burnaby, and apply to the Terminal Work unless it is found that the doctrines of paramountcy and/or interjurisdictional immunity apply.

c) *Cooperative federalism*

The Board agrees with British Columbia's submission that "[t]oday's constitutional landscape is painted with the brush of cooperative federalism." The Board accepts that the preferred approach is to allow provincial and federal laws to both function where possible. It is important, and in the interest of cooperative federalism, that validly enacted provincial and municipal laws are respected such that matters of local concern are understood and addressed where possible in relation to federal undertakings.

However, it must also be said that the Project, as an interprovincial undertaking of which the Terminal Work is part, has been held to be in the overall Canadian public interest under the federal NEB Act. The public interest that was assessed is inclusive of *all* Canadians, with national, regional, and local benefits and burdens all having been considered. The Board agrees with Saskatchewan's submission that it would be contrary to a basic principle of federalism (that the federal jurisdiction takes into account the interests of all Canadians) if one province, or a single municipality of one province, could frustrate the construction of an interprovincial pipeline.

In light of the above, the Board has undertaken the constitutional analysis with due restraint, while also recognizing that there is an appropriate place for the doctrines of paramountcy and interjurisdictional immunity to apply where necessary.

d) *Prematurity*

The Board rejects the arguments of Burnaby and of British Columbia that the Motion is premature. The Board does not agree that Trans Mountain must necessarily wait to seek constitutional relief until such time that Burnaby rejects a permitting application, or imposes an inappropriately onerous condition, or takes formal steps to enforce its bylaws.

The issue of whether there is an operational conflict (or impossibility of dual compliance) on the face of the provincial and federal enactments can be assessed now.

Further, it is only logical that delay in processing municipal permit applications can, in certain circumstances, be sufficient in and of itself to engage the doctrines of paramountcy and interjurisdictional immunity. To hold otherwise would allow a province or municipality to delay a federal undertaking indefinitely, in effect accomplishing indirectly what it is not permitted to do directly. It is not a hypothetical matter. Accordingly, the Board has considered whether the

process undertaken by Burnaby under the Zoning and Tree Bylaws, including, but not limited to, the time elapsed, engages the doctrines of paramountcy or interjurisdictional immunity in light of all of the circumstances.

e) Paramountcy

The doctrine of paramountcy holds that, where there are inconsistent or conflicting validly enacted federal and provincial laws, the federal law prevails. Paramountcy renders the provincial law inoperative to the extent of the inconsistency or conflict.⁹ Consistent with the Supreme Court of Canada's finding in *Lafarge*,¹⁰ the Board finds that Trans Mountain has established the existence of valid federal and provincial laws and the impossibility of their simultaneous application by reason of an operational conflict or because such application would frustrate the purpose of the federal enactment.

Operational conflict

The Board is not persuaded that there is an impossibility of dual compliance *on the face* of the NEB Act, Certificate, and relevant Board orders on the one hand, and the Zoning or Tree Bylaws on the other. In other words, there is no operational conflict, and compliance with both is theoretically possible. This differs from the situation in *Lafarge*, in which it was not possible for the facility in question (in that instance an integrated cement facility situated in the Port of Vancouver) to comply with both the Vancouver Port Authority's approval of the development and the municipal requirement for a certain fence height.

In the Board's view, the fact that Burnaby's bylaws confer some discretion on decision-makers in terms of whether to grant a permit, or the fact that a discretionary variance of a bylaw may be required, is not in and of itself enough, in this case, to establish an operational conflict. The Board is not persuaded that the criteria for granting the necessary variances under the bylaws cannot accommodate the Terminal Work. The Board accepts that Burnaby cannot deny necessary municipal permits or variances thereto for the Project; however, this does not render the entire municipal permitting process inoperable. As was the case in *Coastal First Nations v. British Columbia (Environment)*,¹¹ on its face, there are no obvious problems with the imposition of Burnaby's Zoning and/or Tree Bylaws on the Board-regulated Project. In the Board's view, concluding otherwise would be an overreach and inconsistent with the principles of cooperative federalism, which require that where regulatory authority might overlap between federal and provincial (in this case, delegated to the municipal level) jurisdictions, validly enacted legislative provisions should be applied harmoniously to the extent possible. The *possibility* exists to apply both the federal legislative scheme and the municipal bylaws to the Project components at issue in this Motion, as demonstrated by both Trans Mountain's commitment during the regulatory hearing to adhere to such bylaws, and the Board's inclusion of adherence to that commitment as a condition on the Certificate.

⁹ *Canadian Western Bank v. Alberta*, 2007 SCC 22.

¹⁰ *British Columbia (Attorney General) v. Lafarge Canada Inc.*, [2007] 2 S.C.R. 86, at para 77.

¹¹ *Coastal First Nations v. British Columbia (Environment)*, 2016 BCSC 34 [*Coastal First Nations*].

Frustration of federal purpose

The Board is of the view; however, that Burnaby's application of section 7.3 of the Zoning Bylaw and section 3 of the Tree Bylaw, in this specific instance, has frustrated a federal purpose.

All pipelines authorized under Part III of the NEB Act, including the Project, have been held to be in the Canadian public interest. Trans Mountain was granted the Certificate (and related Board orders) in respect of the Project after a thorough regulatory review by the Board and ultimate approval from the GIC. Trans Mountain, in respect of the Project of which the Terminal Work is part, is granted all of the powers in section 73 of the NEB Act.

The purpose of section 73 of the NEB Act is to facilitate the carrying out of interprovincial and international pipelines, and specifically their construction, maintenance, operation, and abandonment. There are no timeline restrictions in section 73. The section grants powers to Trans Mountain that are in effect now. The Certificate and related Board orders grant Trans Mountain the authorization to construct, operate, and maintain the Project's components. Trans Mountain's authority to act pursuant to section 73 of the NEB Act, and the authorizations granted in the Certificate and Board orders, are vital to the Project's orderly development and efficient operation, as they would be for all pipelines under the Board's regulatory jurisdiction. As was the case in *Rogers*, this orderly development and efficient operation is being compromised.¹² In this instance, it is by Burnaby's actions, or inaction, in not assessing Trans Mountain's PPA applications in a timely and reasonable manner.

As discussed in Section F above, the Board has concluded that Burnaby's processes to review the PPA applications and its consideration of associated Tree Cutting Permits, including the overall time elapsed, was not reasonable. This includes the fact that the review time is the cause of, or is a significant contributing or exacerbating factor to, delay to Terminal Work construction, and the prejudice associated with that delay. There is no indication of an imminent resolution. The Board finds that Burnaby's unreasonable process and delay is frustrating Trans Mountain's exercise of its authorizations under the Certificate and other Board orders, and its powers under paragraphs 73(c), (e), (g), and (i) of the NEB Act. This is the case regardless of the nature of Burnaby's motives or intentions in applying its bylaws. Accordingly, the doctrine of paramountcy applies such as to render section 7.3 of the Zoning Bylaw and section 3 of the Tree Bylaw inoperable to the extent that they prevent the Terminal Work.

f) Interjurisdictional immunity

Under the doctrine of interjurisdictional immunity, undertakings falling within federal jurisdiction, such as the Project, are immune from otherwise valid provincial laws (and by extension municipal bylaws) that would have the effect of impairing (not just affecting) a core competence of Parliament or vital part of the federal undertaking. First, it must be determined if the provincial law trenches on the protected core of a federal competence. If so, it must be determined if the provincial law's effect on the exercise of the protected federal power is sufficiently serious to invoke the doctrine of interjurisdictional immunity.¹³

¹² *Rogers Communications Inc. v. Chateauguay (City)*, 2016 SCC 23 at para 66, [*Rogers*].

¹³ Ruling No. 40, *supra* note 2

Based on the facts of this case, the Board finds that Burnaby's unreasonable process and delay in considering the PPA applications under section 7.3 of the Zoning Bylaw, and the Tree Cutting Permits under section 3 of the Tree Bylaw, impair a core competence of Parliament.

Even viewed with restraint, the unreasonable amount of time it has taken Burnaby to process the PPA applications and Tree Cutting Permits is having a sufficiently serious effect on *when* the Terminal Work, which is part of the Project, can be carried out. The Board agrees with Trans Mountain that the matters of *when and where* the Project can be carried out, and its orderly development, fall within the "core" of federal jurisdiction over interprovincial undertakings, and are vital to the Project. The Board has found that the Burnaby permitting process is the cause of, or a contributing or exacerbating factor to, construction delays. The process has had a significant and direct implication on Project timing.

Further, it is not just a matter of timing alone. Unreasonable or indefinite delays to the Project's timing or orderly development could in fact effect whether or not the Project is carried out at all (as Trans Mountain's evidence demonstrates). Clearly, the matter of *if* the Project is carried out falls within the core of federal jurisdiction. In this respect, the Board finds *Coastal First Nations v. British Columbia (Environment)*¹⁴ to be persuasive, as it is beyond Burnaby's jurisdiction to ultimately refuse the Project. In this case, the Board has found that the evidence on the whole does not support a conclusion that Burnaby is getting closer to issuing PPAs or Tree Cutting Permits. Rather, there is no indication of an imminent resolution.

This is not to say that any delay in provincial or municipal permitting processes will engage the doctrine of interjurisdictional immunity, a point British Columbia raised in attempting to distinguish this matter from the delay that precipitated such a finding in *Rogers Communications Inc. v. Chateauguay (City)*.¹⁵ The Board has made its findings in this case based on the specific facts before it. The evidence does not demonstrate that Burnaby's actions or inactions were a legitimate exercise of municipal laws, but rather, viewed as a whole, that the delay already incurred, and ongoing with no clear end in sight, constitutes a sufficiently serious entrenchment on a protected federal power. The Supreme Court of Canada held in *Rogers* that the siting of component antenna systems are part of the core federal power over radio-communication. The Board similarly finds that the Project components at issue in this instance are of a similar nature. Just as the delay in *Rogers* prevented the company from constructing its federally approved network to the point of impairment, the Board finds a similar situation to exist here.

In conclusion, the Board finds that the doctrine of interjurisdictional immunity renders section 7.3 of the Zoning Bylaw and section 3 of the Tree Bylaw inapplicable to the extent that they impair the Terminal Work as authorized by paragraphs 73(c), (e), (g), and (i) of the NEB Act, and the Certificate and relevant Board orders issued under the NEB Act.

¹⁴ *Coastal First Nations*, *supra* note 11, at para 55.

¹⁵ *Rogers*, *supra* note 10.

I. CONCLUSION

The Board has determined that it is in the public interest to relieve Trans Mountain of the requirement of Certificate Condition 2, insofar as it requires Trans Mountain to obtain – with respect to the BTE, KB Site, and WMT – PPAs under section 7.3 of the Zoning Bylaw and Tree Cutting Permits under section 3 of the Tree Bylaw. This relief is granted pursuant to Certificate Condition 1 and does not require GIC approval.

The Board has the jurisdiction to decide the constitutional questions raised in the Motion and to grant the related relief sought. The doctrines of federal paramountcy and/or interjurisdictional immunity render section 7.3 of the Zoning Bylaw and section 3 of the Tree Bylaw inapplicable or inoperative to the Terminal Work. To be clear, this relief does not absolve Trans Mountain from compliance with any other relevant Burnaby bylaws.

All of the above constitute the Board's reasons for the issuance of Order MO-057-2017 on 6 December 2017.



D. Hamilton
Presiding Member



P. Davies
Member



A. Scott
Member

Calgary, Alberta
January 2018

Reasons for Decision
MH-081-2017
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Page 075 to/à Page 121

Withheld pursuant to/removed as

s.14

Nanninga, Tanera AG:EX

From: Williams, Chelsea S LASS:EX
Sent: Tuesday, January 30, 2018 11:57 AM
Subject: RE: Additional measures being developed to protect B.C.'s environment from spills - BC Gov News

Please also share the following related graphics on social media:

Twitter link:

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From: Williams, Chelsea S
Sent: January-30-18 11:54 AM
Subject: FW: Additional measures being developed to protect B.C.'s environment from spills - BC Gov News

The following release went out earlier this morning -

From: noreply.newsondemand@gov.bc.ca
Sent: 30 January 2018 10:00:35 (UTC-08:00) Pacific Time (US & Canada)
Subject: BC Gov News - Additional measures being developed to protect B.C.'s environment from spills

For Immediate Release
2018ENV0003-000115
Jan. 30, 2018

Ministry of Environment and Climate Change Strategy

NEWS RELEASE

Additional measures being developed to protect B.C.'s environment from spills

VICTORIA - The provincial government is proposing a second phase of regulations to improve preparedness, response and recovery from potential spills.

The first phase of the regulations, approved in October 2017, established a standard of preparedness, response and recovery necessary to protect B.C.'s environment. With some exceptions for B.C. oil and gas regulated entities, the Phase-1 regulations apply to pipelines transporting any quantity of liquid petroleum products, and rail or trucking operations transporting over 10,000 litres of liquid petroleum products.

For the second phase, the Province will be looking for feedback in five areas:

* Response times, to ensure timely responses following a spill;

- * Geographic response plans, to ensure resources are available to support an immediate response, that take into account unique characteristics of a given sensitive area;
- * Compensation for loss of public and cultural use of land, resources or public amenities in the case of spills;
- * Maximizing application of regulations to marine spills; and
- * Restrictions on the increase of diluted bitumen ("dilbit") transportation until the behaviour of spilled bitumen can be better understood and there is certainty regarding the ability to adequately mitigate spills.

"The people of B.C. need to know that there is effective spill management across the province and, in particular for our most environmentally sensitive areas, including coastlines," said George Heyman, Minister of Environment and Climate Change Strategy. "We believe spills should not happen. But if hazardous pollutants have potential to spill, our government will ensure that spillers must be prepared and able to fully mitigate the environmental damage before they proceed."

An independent scientific advisory panel will be established to make recommendations to the Minister of Environment and Climate Change Strategy on if and how heavy oils can be safely transported and cleaned up, if spilled.

"The potential for a diluted bitumen spill already poses significant risk to our inland and coastal environment and the thousands of existing tourism and marine harvesting jobs," Heyman said. "British Columbians rightfully expect their government to defend B.C.'s coastline and our inland waterways, and the economic and environmental interests that are so important to the people in our province, and we are working hard to do just that."

The process to receive feedback on the proposed regulations will feature engagement with First Nations, to begin as soon as possible. To ensure the views of the broad range of stakeholders are heard, government will meet with industry, local governments and environmental groups over the coming weeks and months.

As well, the general public will be able to provide input online through written comments, once an intentions paper is released. The intentions paper will provide an overview of the proposed regulations, and is expected to be posted before the end of February 2018.

A backgrounder follows.

Contact:

Media Relations
Ministry of Environment and Climate Change Strategy
250 953-3834

BACKGROUNDER

Proposed regulations under the Environmental Management Act

The following are proposed regulations under the Environmental Management Act (EMA) to improve liquid petroleum spill response and recovery:

1. Response times

Response times are the established timeframes within which response resources will be activated and arrive at a spill site. Currently, the Ministry of Environment and Climate Change Strategy does not regulate in this area. Establishing response-time requirements would align with practices of other regulators, and those in neighbouring jurisdictions.

2. Geographic response plans

Geographic response plans (GRPs) identify sensitive, natural, cultural, or significant economic resources at risk from spills. They outline the response actions that are appropriate for that site to minimize impacts to these resources, should a spill occur. GRPs are map-based, and each one has a variety of information that is useful to responders, particularly in the first 48 to 72 hours of a response.

3. Loss of public use

Loss of public use refers to the requirement that spillers provide some form of restitution for the impacts of spills on the use and/or enjoyment of public spaces and resources. These include the use of beaches, parks and forests, the enjoyment of wildlife, wilderness spaces, food resources, recreation and drinking water, as well as the intrinsic value of archaeological and cultural sites.

4. Marine application

The Province seeks to broaden existing ministry authority to ensure provincial interests are fully addressed in marine spill prevention, preparedness, response and recovery. While the primary responsibility for marine spills lies with federal agencies, a spill of any significance will impact and involve all orders of government. The provincial government has a responsibility to ensure there is a regulatory framework in place that protects its coastal resources.

5. Diluted bitumen transportation restrictions

The Province will create an independent scientific advisory panel to help address the scientific uncertainties outlined in the report, The Royal Society of Canada Expert Panel: The Behaviour and Environmental Impacts of Crude Oil Released into Aqueous Environments. The recommendations of the advisory panel will inform future regulatory development and approaches to spill response.

In order to protect B.C.'s environmental and economic interests while the advisory panel is proceeding, the Province is proposing regulatory restrictions to be placed on the increase of diluted bitumen ("dilbit") transportation.

Contact:

Media Relations
Ministry of Environment and Climate Change Strategy
250 953-3834

[!\[\]\(4b7a79268f6ba26c1471d4232fffa85a_img.jpg\) READ MORE](#)

Economy, Environment and Climate Change Strategy, Government Operations

Page 125 to/à Page 129

Withheld pursuant to/removed as

s.14

Nanninga, Tanera AG:EX

From: Frampton, Caelie ENV:EX
Sent: Monday, January 22, 2018 8:12 AM
To: Smith, George AG:EX
Subject: Fwd: Fight Trudeau's NEB in Court

FYI

Sent from my iPhone

Begin forwarded message:

From: "Salkus, Beverley ENV:EX" <Beverley.Salkus@gov.bc.ca>
Date: January 22, 2018 at 8:04:04 AM PST
To: "Xia, Eveline ENV:EX" <Eveline.Xia@gov.bc.ca>, "Frampton, Caelie ENV:EX" <Caelie.Frampton@gov.bc.ca>
Cc: "Kennedy, Karla ENV:EX" <Karla.Kennedy@gov.bc.ca>
Subject: FW: Fight Trudeau's NEB in Court

FYI - New campaign that came in over the weekend 605 emails

-----Original Message-----

From ^{s.22}

Sent: Monday, January 22, 2018 8:00 AM

To: Minister, ENV ENV:EX

Subject: Fight Trudeau's NEB in Court

Dear Minister of Environment George Heyman,

Dear Premier Horgan,

On January 18th the National Energy Board (NEB) ruled in favour of a motion brought by Kinder Morgan that allows the NEB to expedite local and provincial permits for their Trans Mountain pipeline. I am concerned that this strips your government and other democratically elected local governments of their ability to protect the interests and safety of their residents.

I am writing to urge you challenge this NEB ruling in the Federal Court of Appeals. As I understand it, NEB decisions like this one can be subject to judicial challenge. I urge you and your government to take leadership on this and, of behalf of all British Columbians, challenge this outrageous attempt by an unelected federal body to trample on rights of democratically elected governments.

During last spring's election campaign, you promised to use every tool in the toolbox to protect BC's interests when it came to Kinder Morgan's pipeline. Now it appears that the NEB is trying to steal your toolbox. I want you to stand up and fight back against this clear infringement on the provinces powers on behalf me and the hundreds of thousands of British Columbians who live in communities along the route of the proposed pipeline.

I urge you and your government to take leadership on this and, on behalf of all British Columbians, challenge this outrageous attempt by an unelected federal body to trample on rights of democratically elected governments. British Columbians will be watching closely to see that you are defending our interests.

Sincerely,

s.22

Nanninga, Tanera AG:EX

From: Minister, AG AG:EX
Sent: Monday, January 22, 2018 10:34 AM
To: Smith, George AG:EX
Subject: Heads Up - We had over 600 emails like this over the weekend - They are "form" emails
... FW: Please Appeal NEB's New Expedited Dispute Resolution Process

-----Original Message-----

From: S.22
Sent: Saturday, January 20, 2018 1:33 PM
To: Minister, AG AG:EX
Subject: Please Appeal NEB's New Expedited Dispute Resolution Process

Dear Attorney General David Eby,

Dear Premier Horgan,

On January 18th the National Energy Board (NEB) ruled in favour of a motion brought by Kinder Morgan that allows the NEB to expedite local and provincial permits for their Trans Mountain pipeline. I am concerned that this strips your government and other democratically elected local governments of their ability to protect the interests and safety of their residents.

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I urge you and your government to take leadership on this and, on behalf of all British Columbians, challenge this outrageous attempt by an unelected federal body to trample on rights of democratically elected governments. British Columbians will be watching closely to see that you are defending our interests.

Sincerely,

s.22

Nanninga, Tanera AG:EX

From: Williams, Chelsea S <Chelsea.Williams@leg.bc.ca>
Sent: Tuesday, January 30, 2018 11:57 AM
Subject: RE: Additional measures being developed to protect B.C.'s environment from spills - BC Gov News

Please also share the following related graphics on social media:

Twitter link:

<https://twitter.com/BCNDPCaucus/status/958413970230005761>

Facebook:

<https://www.facebook.com/BCNDPCaucus/photos/a.1084550158274515.1073741828.1061053830624148/1740337232695801/?type=3&theater>

From: Williams, Chelsea S
Sent: January-30-18 11:54 AM
Subject: FW: Additional measures being developed to protect B.C.'s environment from spills - BC Gov News

The following release went out earlier this morning -

From: noreply.newsondemand@gov.bc.ca
Sent: 30 January 2018 10:00:35 (UTC-08:00) Pacific Time (US & Canada)
Subject: BC Gov News - Additional measures being developed to protect B.C.'s environment from spills

For Immediate Release
2018ENV0003-000115
Jan. 30, 2018

Ministry of Environment and Climate Change Strategy

NEWS RELEASE

Additional measures being developed to protect B.C.'s environment from spills

VICTORIA - The provincial government is proposing a second phase of regulations to improve preparedness, response and recovery from potential spills.

The first phase of the regulations, approved in October 2017, established a standard of preparedness, response and recovery necessary to protect B.C.'s environment. With some exceptions for B.C. oil and gas regulated entities, the Phase-1 regulations apply to pipelines transporting any quantity of liquid petroleum products, and rail or trucking operations transporting over 10,000 litres of liquid petroleum products.

For the second phase, the Province will be looking for feedback in five areas:

* Response times, to ensure timely responses following a spill;

- * Geographic response plans, to ensure resources are available to support an immediate response, that take into account unique characteristics of a given sensitive area;
- * Compensation for loss of public and cultural use of land, resources or public amenities in the case of spills;
- * Maximizing application of regulations to marine spills; and
- * Restrictions on the increase of diluted bitumen ("dilbit") transportation until the behaviour of spilled bitumen can be better understood and there is certainty regarding the ability to adequately mitigate spills.

"The people of B.C. need to know that there is effective spill management across the province and, in particular for our most environmentally sensitive areas, including coastlines," said George Heyman, Minister of Environment and Climate Change Strategy. "We believe spills should not happen. But if hazardous pollutants have potential to spill, our government will ensure that spillers must be prepared and able to fully mitigate the environmental damage before they proceed."

An independent scientific advisory panel will be established to make recommendations to the Minister of Environment and Climate Change Strategy on if and how heavy oils can be safely transported and cleaned up, if spilled.

"The potential for a diluted bitumen spill already poses significant risk to our inland and coastal environment and the thousands of existing tourism and marine harvesting jobs," Heyman said. "British Columbians rightfully expect their government to defend B.C.'s coastline and our inland waterways, and the economic and environmental interests that are so important to the people in our province, and we are working hard to do just that."

The process to receive feedback on the proposed regulations will feature engagement with First Nations, to begin as soon as possible. To ensure the views of the broad range of stakeholders are heard, government will meet with industry, local governments and environmental groups over the coming weeks and months.

As well, the general public will be able to provide input online through written comments, once an intentions paper is released. The intentions paper will provide an overview of the proposed regulations, and is expected to be posted before the end of February 2018.

A backgrounder follows.

Contact:

Media Relations
Ministry of Environment and Climate Change Strategy
250 953-3834

BACKGROUND

Proposed regulations under the Environmental Management Act

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Contact:

Media Relations
Ministry of Environment and Climate Change Strategy
250 953-3834

[!\[\]\(9c2e8d1b5bd77cb5c9f83b7a9cff79fd_img.jpg\) READ MORE](#)

Economy, Environment and Climate Change Strategy, Government Operations

Page 7 to/à Page 8

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s.14;s.13

Page 9

Withheld pursuant to/removed as

s.14

King, Kim J M JAG:EX

From: King, Kim J M JAG:EX
Sent: Monday, January 29, 2018 10:40 AM
To: Mbao, Chansa JAG:EX
Subject: FW: NGTL - Integration Asset Transfer - Amending Orders AO-009-GC-113 and AO-001-GC-123
Attachments: 2017-12-27 - NEB Amending Order AO-001-GC-123 and AO-009-GC-113_Integrat....pdf

Over to you Chansa.

Many thanks,

Kim Jung Mee King

Correspondence Coordinator, CCU

Office of the Deputy Attorney General | Ministry of Attorney General

PO Box 9290 Stn Prov Govt | Victoria BC | V8W 9J7

Phone: 250-387-2744 | Fax: 250-387-6224



Please consider the environment before printing.

This message (and any attachment) may contain confidential/privileged information and is intended only for the use of the person or persons to whom it is addressed.

If you have received this communication in error, please destroy the email and any attachments immediately and notify me by telephone or email.

From: Hughes, Candice AG:EX
Sent: Monday, January 29, 2018 10:38 AM
To: King, Kim J M JAG:EX
Subject: FW: NGTL - Integration Asset Transfer - Amending Orders AO-009-GC-113 and AO-001-GC-123
Hi Kim,

This is one that needs to go to Duty Counsel Office (Chansa).

I would be grateful to speak with you re these emails we are getting from the NEB, as time allows in your day.

Many thanks,

Candice

From: Shawna Collins [mailto:shawna_collins@transcanada.com]

Sent: Tuesday, January 9, 2018 9:08 AM

To: Alberta Dept of Energy - Jack Shaw; Alberta Environment - Corinne Kristensen; Alberta Utilities Commission - Douglas Larder; CAEPLA - David Core; Canadian Electricity Association - Jim Burpee; Canadian Energy Pipeline association - Brenda Kenny; Canadian Gas Association - Bryan Gormley; CAPP - Nick Schultz; Chemistry Industry Assoc of Canada - David Podruzny; Chemistry Industry Assoc of Canada - L Gibbard; Cohen Highley LLP - Paul Vogel; ENREG Group Inc. - Murray Newton; Environment Canada - Lorna Hendrickson; Explorers and Producers Association of Canada - Gary Leach; Minister, EMPR
EMPR:EX; Minister of Justice - Gov't of the NWT - The Honourable David Ramsay; Minister of Justice - Gov't of the Yukon - The Honourable Mike Nixon; Minister of Justice & Attorney General - Province of Alberta - The Honourable Jonathan Denis; Minister of Justice & Attorney General - The Honourable Gordon Wyant; Minister of Justice & Attorney General of Canada - The Honourable Peter Mackay; Minister, AG AG:EX; Minister of the Environment - The Honourable Leona Aglukkaq; Ministry of Energy and Resources - Gov't of Sask - Tim McMillan; Natural Resources Canada - Marco Presutti; Ontario Energy association - Elise Herzig; Scott Petrie LLP, Law Firm - John Goudy; AltaGas Ltd. - Nicole Axelson Plumb; CAPP - Ritchie Fairbairn; Encana Corporation - Dan Dunlop; Encana Corporation - Rinde Powell; Gov't of Alberta - Alberta Dept of Justice - Colin King; IGCAA - Mark Thomas; Matthew Ducharme; Nova Chemicals Corporation - Sonia Mah; Nova Chemicals Corporation - Tammy Ardolino; Steph Brown*; Stoney Nakoda Nations - Bill Snow; Stoney Nakoda Nations - Britta Eriksson; Stoney Nakoda Nations - Doug Rae; Talisman Energy Inc. - Greg Giesbrecht

Cc: Nicole Prince

Subject: NGTL - Integration Asset Transfer - Amending Orders AO-009-GC-113 and AO-001-GC-123

The National Energy Board has issued attached Order AO-009-GC-113 varying Certificate of Public Convenience and Necessity GC-113, and AO-001-GC-123 varying Certificate of Public Convenience and Necessity GC-123 as approved by the Governor in Council on 15 December 2017.

Shawna Collins
Administrative Analyst
Regulatory, Canadian Gas Pipelines
shawna_collins@transcanada.com
450 – 1 Street SW
Calgary, Alberta
T2P 5H1
Tel: 403.920.5235
Fax: 403.920.2347



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National Energy
Board



Office national
de l'énergie

File OF-Fac-Gas-N081-2013-17 03
27 December 2017

Mr. Matthew D. Ducharme
Legal Counsel
Canadian Law, Natural Gas Pipelines
NOVA Gas Transmission Ltd.
450 – 1 Street SW
Calgary, AB T2P 5H1
Email matthew_ducharme@transcanada.com

Dear Mr. Ducharme:

**NOVA Gas Transmission Ltd. (NGTL)
Integration Asset Transfer
Application for Request to Vary Schedules to Various Orders Pursuant to
Section 21 of the *National Energy Board Act*, R.S.C. 1985, c. N-7, as amended, to
Reflect the Smaller Approved Set of Assets Transferred**

The National Energy Board has issued attached Order AO-009-GC-113 varying Certificate of Public Convenience and Necessity GC-113, and AO-001-GC-123 varying Certificate of Public Convenience and Necessity GC-123 as approved by the Governor in Council on 15 December 2017.

The Board directs NGTL to serve a copy of this letter and attachments on all interested parties.

Yours truly,

Original signed by S. Wong for

Sheri Young
Secretary of the Board

Attachments

Suite 210, 517 Tenth Avenue SW
Calgary, Alberta T2R 0A8

517, Dixième Avenue S.-O., bureau 210
Calgary (Alberta) T2R 0A8

Canada

Telephone/Téléphone : 403-292-4800
Facsimile/Télécopieur : 403-292-5503
www.neb-one.gc.ca

Telephone/Téléphone : 1-800-899-1265
Facsimile/Télécopieur : 1-877-268-8803



ORDER AO-009-GC-113

IN THE MATTER OF the *National Energy Board Act*
(NEB Act) and the regulations made thereunder; and

IN THE MATTER OF an application by NOVA Gas
Transmission Ltd. (NGTL), under section 21 of the NEB Act
to vary Order AO-004-GC-113 filed with the National
Energy Board (NEB or Board) under File OF-Fac-Gas-N081-2013-17 03.

BEFORE the Board on 3 November 2016.

WHEREAS on 15 April 2009, the Board issued Certificate of Public Convenience and
Necessity (CPCN) GC-113 to NGTL, authorizing the operation of the TransCanada Alberta
System;

AND WHEREAS CPCN GC-113 came into force on 29 April 2009;

AND WHEREAS on 1 June 2010, the Board issued Amending Order AO-1-GC-113 to NGTL
to reflect the removal of the Moosehorn River Sales Lateral and Moosehorn River Sales Meter
Station from the Schedule A attached to and forming part of CPCN GC-113;

AND WHEREAS on 16 February 2011 the Board issued Amending Order AO-2-GC-113 to
NGTL to correct errors in the Schedule A to CPCN GC-113;

AND WHEREAS on 28 May 2013 the Board issued Amending Order AO-003-GC-113 to
NGTL to reflect the removal of the Brazeau East Lateral Pipeline and Pembina West Meter
Station from the Schedule A to CPCN GC-113;

AND WHEREAS on 16 December 2014, the Board issued Amending Order AO-004-GC-113 to
NGTL to reflect the removal of certain facilities from the Schedule A to CPCN GC-113 from
NGTL to ATCO Gas and Pipelines Ltd. (ATCO) as part of the Integration Asset Transfer Project
(Project). Schedule A of Amending Order AO-004-GC-113 reflects the facilities that left the
Board's jurisdiction;

AND WHEREAS on 5 May 2015 the Board issued Amending Order AO-005-GC-113
amending Schedule A to CPCN GC-113 to reflect the removal of the Hackett Lateral and
Hackett Lateral Loop and the Hackett Meter Station from the TransCanada Alberta System;

.../2

AND WHEREAS on 25 May 2016 the Board issued Amending Order AO-006-GC-113 amending CPCN GC 113 to reflect the removal of the NPS 6 Elk River South Lateral pipeline (1984), NPS 6 Elk River South Lateral Loop pipeline (1997), Elk River South Meter Station, and Elk River South Sales Meter Station listed in Schedule A of MO-38-2015 from the TransCanada Alberta System;

AND WHEREAS on 25 May 2016 the Board issued Amending Order AO-007-GC-113 amending CPCN GC-113 to reflect the removal of the NPS 8 Brazeau Lateral (1968), NPS 8 Brazeau Lateral Loop (1974), NPS 6 Brazeau Lateral Loop (1980), NPS 12 Brazeau Lateral Loop (1975), NPS 8 Brazeau East Lateral (1969), Brazeau Receipt Meter Station, and Brazeau East Receipt Meter Station listed in Schedule A of GC-113 from the TransCanada Alberta System;

AND WHEREAS on 4 April 2016 the Board approved Amending Order AO-008-GC-113 amending CPCN GC -113 to reflect the removal of the Burnt River Receipt Meter Station, subject to approval from the Governor in Council;

AND WHEREAS on 20 September 2016 NGTL requested that the Board vary Schedule A to Amending Order AO-004-GC-113 to reflect the smaller set of approved assets transferred from NGTL to ATCO (Application);

AND WHEREAS the Board has examined the Application and considers it to be in the public interest to grant the following relief;

AND WHEREAS the Governor in Council by Order in Council No. P.C. 2017-1694 dated 15 December 2017, has approved the issuance of this Amending Order;

IT IS ORDERED THAT, pursuant to section 21 of the NEB Act, Schedule A of Amending Order AO-004-GC-113 is revoked and replaced by Schedule A attached hereto, which reflects the facilities that left the Board's jurisdiction;

IT IS FURTHER ORDERED THAT, CPCN GC-113, as amended, remains fully in force and the approved Project, as varied by this Amending Order, continues to be subject to the terms and conditions found therein.

Issued at Calgary, Alberta, on 27 December 2017.

NATIONAL ENERGY BOARD

Original signed by S. Wong for

Sheri Young
Secretary of the Board

AO-009-GC-113

SCHEDULE A
for the NGTL Transferred Assets
National Energy Board Order AO-009-GC-113

NOVA Gas Transmission Ltd.
Application dated 20 September 2016
assessed pursuant to subsection 21(2) of the *National Energy Board Act*

Vary list of Alberta System Facilities in Schedule A of GC-113

Integration Asset Transfer Project
File OF-Fac-Gas-N081-2013-17 03

TRANCHE 2

Pipe Segments

Pipe Segment Name	Length (km)	MOP (kPa)	Start Location					End Point				
			ESD	SEC	TWP	RGE	MER	ESD	SEC	TWP	RGE	MER
Benalto West Lateral - NPS 4	0.87	8450	10	12	38	3	W5	8	12	38	3	W5
Bonnie Glen Lateral - NPS 12	7.40	9280	15	8	47	27	W4	1	28	46	27	W4
Bonnie Glen M/S Producer Tie-In - NPS 12	1.05	9280	3	17	47	27	W4	15	8	47	27	W4
Briggs Lateral - NPS 6	1.76	8450	5	1	39	1	W5	16	1	39	1	W5
Crossroads Gas Co-op Tap #4026	0.05	6205	4	30	34	26	W4	4	30	34	26	W4
CWNG Tap P-304 Supply Line Relocation	0.40	6790	1	2	34	26	W4	8	2	34	26	W4
Cygnat Lake M/S Producer Tie-In	0.05	9030	16	19	38	1	W5	16	19	38	1	W5
EAS M/L (Sylvan Lake Section) - NPS 24	29.90	6280	14	21	40	1	W5	15	35	37	28	W4
EAS M/L Loop - NPS 24	16.90	7067	4	30	34	26	W4	13	2	33	26	W4
Eastern Alberta System M/L Loop (Penhold Section) - NPS 24	25.41	6200	15	35	37	28	W4	1	26	35	27	W4
Eckville Town Tap Relocation - NPS 2	0.48	6350	15	24	40	3	W5	16	24	40	3	W5
Farm Tap #P-304 (CWNG)	0.05	7000	1	2	34	26	W4	8	2	34	26	W4
Ferrybank Lateral Loop Line Split - NPS 8	2.07	8450	13	33	43	1	W5	13	32	43	1	W5
Ferrybank Lateral - NPS 8	2.07	8000	14	13	43	1	W5	13	32	43	1	W5
Gilby Lateral - NPS 16	14.39	6350	2	25	40	3	W5	14	21	40	1	W5
Innisfail Lateral - NPS 6	6.70	6450	1	3	35	1	W5	14	4	35	28	W4
Innisfail Lateral - NPS 6	15.40	6450	14	4	35	28	W4	1	26	35	27	W4
Joffre Lateral	0.03	8450	15	36	38	27	W4	15	36	38	27	W4
Joffre Lateral - NPS 6	12.30	6820	15	36	38	27	W4	1	34	37	27	W4
Joffre Lateral - NPS 6	6.87	6820	1	34	37	27	W4	9	7	37	27	W4
Joffre Sales #2 M/S Lateral - NPS 8	0.16	8450	12	29	38	25	W4	12	29	38	25	W4

AO-009-GC-113

Pipe Segment Name	Length (km)	MOP (kPa)	Start Location					End Point				
			ESD	SEC	TWP	RGE	MER	ESD	SEC	TWP	RGE	MER
Joffre Sales Lateral - NPS 10	27.30	7500	9	7	37	27	W4	1 2	29	38	25	W4
Medicine River A Lateral - NPS 4	0.41	8140	6	16	38	4	W5	3	16	38	4	W5
Medicine River Lateral - NPS 4	1.22	0	5	17	38	4	W5	8	17	38	4	W5
Medicine River Lateral - NPS 4	3.87	6550	6	6	38	3	W5	13	33	37	3	W5
Medicine River Lateral - NPS 4	7.31	6550	8	17	38	4	W5	6	6	38	3	W5
Mulhurst Lateral - NPS 12 (Purchased from Imperial Oil in Nov-96)	32.50	9280	1	28	46	27	W4	13	33	43	1	W5
Penhold M/S Producer Tie-In - NPS 6	0.11	6205	16	29	36	27	W4	16	29	36	27	W4
Penhold North Sales Lateral - NPS 6	0.32	6205	3	19	37	27	W4	6	19	37	27	W4
Plains M/L Lateral Loop (Three Hills Section)	10.26	6280	1	26	35	27	W4	5	30	34	26	W4
Plains Mainline - NPS 24	33.11	6210	13	32	43	1	W5	14	21	40	1	W5
Plains Mainline - NPS 24	29.64	6210	14	21	40	1	W5	2	2	38	28	W4
Plains Mainline - NPS 24	25.09	6210	2	2	38	28	W4	1	26	35	27	W4
Plains Mainline - NPS 24	27.15	6210	1	26	35	27	W4	12	2	33	26	W4
Sales Tap #4029 For Crossroads Gas Co-op	0.08	6200	3	5	37	27	W4	3	5	37	27	W4
Sales Tap #4238 For Anchorage Pipeline (Abon) & S. Jahrous	0.19	8450	3	16	40	1	W5	3	16	40	1	W5
Sales Tap #4238 For Gull Lake Gas Co-op	0.19	8450	3	16	40	1	W5	3	16	40	1	W5
Springdale Lateral - NPS 12	0.23	8450	13	33	43	1	W5	13	33	43	1	W5
Sylvan Lake East M/S Producer Tie-In	0.05	6520	16	19	38	1	W5	16	19	38	1	W5
Sylvan Lake East M/S - Producer Tie-In - NPS 8	0.47	8450	16	19	38	1	W5	16	19	38	1	W5
Sylvan Lake Lateral Loop - NPS 18	30.50	8450	13	33	37	3	W5	15	21	38	28	W4
Sylvan Lake Lateral - NPS 12	11.90	6520	13	33	37	3	W5	8	16	38	2	W5
Sylvan Lake Lateral - NPS 16	16.49	6520	8	16	38	2	W5	15	31	38	28	W4
Sylvan Lake North M/S - Producer Tie-In	0.84	6516	16	16	38	2	W5	8	16	38	2	W5
Sylvan Lake South Lateral - NPS 8	3.20	6810	13	25	37	3	W5	16	2	38	3	W5
Sylvan Lake South Lateral Loop - NPS 10	3.30	8450	13	25	37	3	W5	16	2	38	3	W5
Sylvan Lake West M/S - Producer Tie-In	0.95	7280	14	32	37	3	W5	13	33	37	3	W5
Three Hills Creek Lateral - NPS 6	9.24	6405	13	13	35	4	W4	3	6	35	26	W4
Three Hills Creek M/S - Sales Gas Line	0.05	5916	12	13	35	26	W4	12	13	35	26	W4

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Pipe Segment Name	Length (km)	MOP (kPa)	Start Location					End Point				
			LSD	SEC	TWP	RGE	MER	LSD	SEC	TWP	RGE	MER
Unknown Gas Tap	0.05	6280	1	26	39	1	W5	13	23	39	1	W5
Wimborne North Lateral	0.19	9850	16	5	35	26	W4	16	5	35	26	W4
Wimborne Lateral -NPS 12	10.69	6790	4	12	34	26	W4	12	2	33	26	W4
Wimborne Sales Lateral - M/S Decommissioned	0.06	0	5	11	33	26	W4	6	11	33	26	W4

Meter Stations

Meter Station Name	Start Location					Meter Type and Size	MOP (kPa)
	LSD	SEC	TWP	RGE	MER		
Benalto West	10	12	38	3	W5M	PD, 7M1440	6205
Bentley	12	21	40	2	W5M	PD, 4.6M900	6205
Bonnie Glen	15	8	47	27	W4M	Orifice, NPS 12	9280
Briggs	5	1	39	1	W5M	Orifice, NPS 8	6205
Chip Lake	1	29	53	10	W5M	PD, 7M1440	7240
Davey Lake	4	17	34	26	W4M	Orifice, NPS 6	6205
Evergreen Sales	6	16	38	4	W5M	PD, 5M175	6895
Forshee	10	8	41	1	W5M	PD, 7M1440	6205
Gaetz Lake Sales	15	36	38	27	W4M	Orifice, NPS 4	6205
Gilby #2	2	25	40	3	W5M	Orifice, NPS 6	6205
Gilby South Pacific	2	25	40	3	W5M	Orifice, NPS 8	6205
Haynes Sales	11	29	38	25	W4M	Turbine, T-18	6205
Innisfail Sales	15	35	34	1	W5M	Orifice, NPS 2	6205
Joffre	15	36	38	27	W4M	Orifice, NPS 6	6205
Joffre East	2	19	38	25	W4M	Orifice, NPS 4	7500
Joffre Sales	12	29	38	25	W4M	Turbine, T-60	6205
Joffre Sales #3	12	29	38	25	W4M	Turbine, T60	6275
Joffre Sales #2	12	29	38	25	W4M	Turbine, T140	6275
Lacombe Lake	11	5	39	28	W4M	Orifice, NPS 4	6205
Lloyd Creek Sales	13	32	43	1	W5M	Turbine, T18	6205
Medicine River A	6	16	38	4	W5M	Orifice, NPS 4	6895
Pembina	13	17	47	9	W5M	Orifice, NPS 8	6205
Pembina Sales	13	17	47	9	W5M	Orifice, NPS 8	6175
Penhold	16	29	36	27	W4M	PD, 7M1440	6205
Penhold North Sales	3	19	37	27	W4M	Turbine, T30	6205
Penhold West	4	13	35	28	W4M	Orifice, NPS 4	6205
Piper Creek	7	11	38	26	W4M	Orifice, NPS 8	6205
Rimbey	13	32	43	1	W5M	Orifice, NPS 12	6155
Rimbey West Sales	13	32	43	1	W5M	Orifice, NPS 12	6205
Sylvan Lake	8	16	38	2	W5M	Orifice, NPS 6	6205
Sylvan Lake East	16	19	38	1	W5M	PD, 7M1440	6205
Sylvan Lake East #2	16	19	38	1	W5M	Orifice, NPS 4	6205
Sylvan Lake South	13	25	37	3	W5M	Orifice, NPS 6	6205
Sylvan Lake West	13	33	37	3	W5M	Orifice, NPS 6	6205
Three Hills Creek	12	13	35	26	W4M	Orifice, NPS 6	6205
Three Hills Creek West	3	6	35	26	W4M	Orifice, NPS 4	6205
Usona Sales	1	28	46	27	W4M	Turbine, T60	6205
Westrose	13	32	43	1	W5M	Orifice, NPS 12	6155

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Meter Station Name	Start Location					Meter Type and Size	MOP (kPa)
	LSD	SEC	TWP	RGE	MER		
Wimborne	5	1	34	26	W4M	Orifice, NPS 8	6205
Wimborne North	16	5	35	26	W4M	Orifice, NPS 6	6205
Wimborne Sales	6	11	33	26	W4M	PD-7M1440	6205

TRANCHE 3**Pipe Segments**

Pipe Segment Name	Length (km)	MOP (kPa)	Start Location					End Point				
			LSD	SEC	TWP	RGE	MER	LSD	SEC	TWP	RGE	MER
East Calgary Lateral - NPS 22	11.77	6590	1	3	26	29	W4	7	7	26	1	W5
East Calgary Lateral - NPS 22	8.05	6590	6	12	26	2	W5	14	7	26	2	W5
East Calgary Lateral - NPS 22	2.29	6590	1	14	26	3	W5	8	15	26	3	W5
East Calgary Lateral - NPS 22	0.25	6590	7	15	26	3	W5	8	15	26	3	W5
East Calgary Lateral - NPS 22	9.05	6590	6	16	26	3	W5	9	16	26	4	W5
East Calgary Lateral - NPS 22 (Abandonment)	2.46	0	14	7	26	2	W5	1	14	26	3	W5
East Calgary Lateral - NPS 22 (Abandonment)		0	7	15	26	3	W5	6	16	26	3	W5
East Calgary Lateral - NPS 22 (Replacement)	2.46	6590	14	7	26	2	W5	1	14	26	3	W5
East Calgary Lateral - NPS 22 (Replacement)	1.88	6590	7	15	26	3	W5	6	16	26	3	W5
East Calgary Lateral - NPS 22 (Upgrade)	2.17	6590	7	7	26	1	W5	6	12	26	2	W5
East Calgary M/S	0.12	6210	1	3	26	29	W4	1	3	26	29	W4

Meter Stations

Meter Station Name	Start Location					Meter Type and Size	MOP (kPa)
	LSD	SEC	TWP	RGE	MER		
East Calgary & Sales	1	3	26	29	W4M	Orifice, NPS 12 & 4	6205
East Calgary B Sales	1	3	26	29	W4M	Turbine, T60	6590

TRANCHE 4**Pipe Segments**

Pipe Segment Name	Length (km)	MOP (kPa)	Start Location					End Point				
			LSD	SEC	TWP	RGE	MER	LSD	SEC	TWP	RGE	MER
Armena Lateral - NPS 6	27.20	8450	6	3	49	21	W4	4	20	46	21	W4
Armena M/S Producer Tie-In - NPS 6	0.35	8450	11	3	49	21	W4	6	3	49	21	W4
Bashaw Lateral - NPS 8	14.27	6550	8	10	42	22	W4	1	29	41	23	W4
Bashaw West Lateral - NPS 3 (Retired)	0.61	6895	10	6	42	22	W4	5	5	42	22	W4
Bittern Lake Sales Lateral - NPS 6	10.48	8450	6	30	46	21	W4	6	29	45	21	W4
Camrose Creek Lateral - NPS 4	2.30	8280	12	27	46	21	W4	4	28	46	21	W4

Pipe Segment Name	Length (km)	MOP (kPa)	Start Location					End Point				
			LSD	SEC	TWP	RGE	MER	LSD	SEC	TWP	RGE	MER
Chain Lakes Gas Co-op #4354	0.34	7070	14	10	39	22	W4	14	10	39	22	W4
Chigwell E Lateral Loop - NPS 6	0.75	6430	7	14	41	24	W4	14	14	41	24	W4
Chigwell East Lateral - NPS 4	0.80	6895	7	14	41	24	W4	14	14	41	24	W4
Chigwell West Lateral - NPS 8	11.57	6430	4	17	41	24	W4	1	29	41	23	W4
Chigwell West Lateral - NPS 8	0.85	6430	9	7	41	24	W4	4	17	41	24	W4
Crossroads Gas Co-op Tap #4020	0.05	7070	13	21	35	24	W4	13	21	35	24	W4
Donalda Lateral - NPS 8	36.47	8380	15	18	40	18	W4	7	22	39	22	W4
Donalda Lateral Loop - NPS 8	16.10	8450	15	31	39	20	W4	6	22	39	22	W4
Dorence Lateral Loop - NPS 8	12.20	6900	8	27	42	21	W4	8	10	42	22	W4
Duhamel Lateral - NPS 4	7.73	8450	5	31	45	20	W4	7	29	45	21	W4
Duhamel Lateral Loop - NPS 6	7.71	8450	5	31	45	20	W4	7	29	45	21	W4
Ferintosh Lateral (NPS 6)	31.21	7580	9	12	44	21	W4	15	8	43	23	W4
Ferintosh Lateral Loop - NPS 8	15.95	8450	9	9	44	22	W4	15	8	43	23	W4
Ferintosh Lateral Loop #2 - NPS 10	8.40	8450	1	17	44	21	W4	12	10	44	22	W4
Ferintosh Lateral Loop #2 (NPS 12)	16.10	8450	12	10	44	22	W4	15	8	43	23	W4
Ferintosh North Lateral - NPS 6	14.52	8450	2	32	45	21	W4	1	17	44	21	W4
Ferintosh North Lateral Loop - NPS 10	13.60	8450	7	29	45	21	W4	1	17	44	21	W4
Huxley East Lateral - NPS 4	10.66	8450	4	29	34	23	W4	5	17	34	24	W4
Huxley Lateral - NPS 6	5.60	8860	5	17	34	24	W4	16	22	34	25	W4
Huxley M/S Producer Tie-In - NPS 6	0.50	9600	6	17	34	24	W4	5	17	34	24	W4
Lamerton Lateral - NPS 4 (D/S portion of Dorence Lateral. U/S of Lamerton sold to Avlanche in Sep-2000)	12.30	8450	8	27	42	21	W4	8	10	42	22	W4
Lousana Lateral - NPS 4	8.50	8450	8	16	37	22	W4	16	22	37	23	W4
Mikwan East Lateral Loop - NPS 4	11.58	8450	1	19	35	21	W4	5	19	35	22	W4
Mikwan East Lateral Loop #2 - NPS 6	8.37	8450	4	24	35	22	W4	5	19	35	22	W4
Mikwan East Lateral - NPS 4	11.29	8450	2	19	35	21	W4	5	19	35	22	W4
Mikwan East Lateral - NPS 4	0.43	8450	1	19	35	21	W4	2	19	35	21	W4
Mikwan Lateral - NPS 6	15.10	9820	5	19	35	22	W4	14	34	35	24	W4
Mikwan Lateral Loop #2 - NPS 10	15.20	8450	5	19	35	22	W4	14	34	35	24	W4
Mikwan Lateral Loop - NPS 6	15.23	8450	5	19	35	22	W4	14	34	35	24	W4

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Pipe Segment Name	Length (km)	MOP (kPa)	Start Location					End Point				
			LSD	SEC	TWP	RGE	MER	LSD	SEC	TWP	RGE	MER
Mikwan North Lateral - NPS 6	0.72	9620	9	8	37	23	W4	8	8	37	23	W4
Miquelon Lake Lateral - NPS 6	5.50	8450	5	23	49	21	W4	6	3	49	21	W4
Mirror Lateral - NPS 6	6.00	8450	6	7	41	22	W4	15	9	41	23	W4
Nevis Lateral (1967) - NPS 16	21.04	7070	6	22	39	22	W4	13	23	37	23	W4
Nevis Lateral (1967) - NPS 16	23.41	7070	13	23	37	23	W4	13	21	35	24	W4
Nevis Lateral (1967) - NPS 16	28.61	7070	13	21	35	24	W4	12	2	33	26	W4
Nevis Lateral 1959 - NPS 16	5.40	6200	7	22	39	22	W4	2	22	39	22	W4
Nevis Lateral Ext. Loop (Lousana)	26.50	7070	6	22	39	22	W4	5	9	37	23	W4
Nevis Lateral Extension - NPS 12	32.50	6450	15	8	43	23	W4	6	7	40	22	W4
Nevis Lateral Extension - NPS 12	1.14	6450	6	7	40	22	W4	3	7	40	22	W4
Nevis Lateral Extension - NPS 12	7.71	6450	3	7	40	22	W4	7	22	39	22	W4
Nevis Lateral Extension Loop - NPS 12	21.10	8450	15	9	41	23	W4	6	22	39	22	W4
Nevis Lateral Extension Loop (Mirror Section) - NPS 12	3.80	6450	1	29	41	23	W4	15	9	41	23	W4
Nevis Lateral Loop (Pine Lake Section) - NPS 16	13.68	8450	16	5	37	23	W4	14	34	35	24	W4
Nevis Lateral Loop (Pine Lake Section) - NPS 16	0.67	8450	5	9	37	23	W4	16	5	37	23	W4
Nevis Lateral Loop (Torington Section) - NPS 20	33.00	7070	14	34	35	24	W4	12	2	33	26	W4
Nevis North Lateral	0.03	7580	7	22	39	22	W4	7	22	39	22	W4
Nevis North Lateral #2	0.03	7584	7	22	39	22	W4	7	22	39	22	W4
Nevis South Feeder - NPS 8	0.45	7580	15	33	38	22	W4	1	3	39	22	W4
Nevis South Lateral Loop - NPS 8	0.45	6210	15	33	38	22	W4	2	3	39	22	W4
Ohaton Lateral Loop - NPS 4	22.60	8450	1	25	46	19	W4	5	31	45	20	W4
Ohaton Lateral - NPS 4	22.57	8450	1	25	46	19	W4	5	31	45	20	W4
Pine Lake Lateral	1.30	0	1	6	35	24	W4	4	6	35	24	W4
Unknown Farm Tap	0.20	7070	2	14	36	24	W4	2	14	36	24	W4
Unknown Farm Tap	0.07	7070	16	35	34	25	W4	16	35	34	25	W4
Wood River M/S Producer Tie-In - NPS 8	0.80	6450	16	8	43	23	W4	15	8	43	23	W4
Wood River Sales Lateral - NPS 8	0.11	6450	15	8	43	23	W4	1	17	43	23	W4
Wood River Sales Lateral (Reverse Line) - NPS 8	0.11	6450	1	17	43	23	W4	15	8	43	23	W4

Meter Stations

Meter Station Name	Start Location					Meter Type and Size	MOP (kPa)
	LSD	SEC	TWP	RGE	MER		
Ardley Sales	11	32	39	22	W4M	PD, 7M1440	8450
Armena	6	3	49	21	W4M	Orifice, NPS 4	8275
Bashaw & Bashaw B	8	10	42	22	W4M	Orifice, NPS 6	6550
Bashaw West Sales	10	6	42	22	W4M	Orifice, NPS 2	6550
Bittern Lake & Sales	6	30	46	21	W4M	Turbine, T18	8275
Camrose Creek	12	27	46	21	W4M	Orifice, NPS 4	8275
Chigwell	4	17	41	24	W4M	Orifice, NPS 6	6430
Chigwell East	7	14	41	24	W4M	Orifice, NPS 6	6205
Chigwell North Sales	4	17	41	24	W4M	PD, 3M1440	6250
Donalda	15	18	40	18	W4M	Orifice, NPS 4	6550
Duhamel	5	31	45	20	W4M	Orifice, NPS 4	8275
Edberg	12	10	44	22	W4M	Orifice, NPS 4	8275
Elnora East No.2	4	24	35	22	W4M	Orifice, NPS 4	7065
Erskine North	15	31	39	20	W4M	Orifice, NPS 2	6550
Ferintosh North & Sales	2	32	45	21	W4M	Orifice, 2 x NPS 2	7585
Ferintosh Sales	12	10	44	22	W4M	PD, 3M1440	7505
Ferintosh South	1	17	44	21	W4M	Orifice, NPS 4	8275
Ferintosh West	9	12	44	21	W4M	Orifice, NPS 6	6895
Goosequill	4	22	35	22	W4M	Orifice, NPS 4	6895
Goosequill West	16	30	35	23	W4M	Orifice, NPS 4	8275
Hummock Lake	1	10	36	24	W4M	Orifice, NPS 4	6895
Huxley	5	17	34	24	W4M	Orifice, NPS 6	6895
Huxley East	4	29	34	23	W4M	Orifice, NPS 4	6895
Lakeview Lake	7	17	35	24	W4M	Orifice, NPS 2	6205
Lakeview Lake #2	7	17	35	24	W4M	Orifice, NPS 4	6205
Lamerton	8	27	42	21	W4M	Orifice, NPS 4	6895
Lamerton No.2	8	27	42	21	W4M	Orifice, NPS 4	6895
Lousana	8	16	37	22	W4M	Orifice, NPS 4	6895
Matmo	15	19	43	22	W4M	Orifice, NPS 4	8275
Mikwan	5	19	35	22	W4M	Orifice, NPS 4	6205
Mikwan East	1	19	35	21	W4M	Orifice, NPS 8	6895
Mikwan North	9	8	37	23	W4M	Orifice, NPS 6	6205
Miquelon Lake	5	23	49	21	W4M	Orifice, NPS 6	8275
Mirror	6	7	41	22	W4M	Orifice, NPS 8	6550
Nevis North	7	22	39	22	W4M	Orifice, NPS 4	6205
Nevis South	1	3	39	22	W4M	Orifice, NPS 12	6205
Ohaton	1	25	46	19	W4M	Orifice, NPS 2	8275
Spotted Creek	9	35	41	23	W4M	Orifice, NPS 6	6550
Stettler South	1	12	40	20	W4M	Orifice, NPS 6	6550
Wood River & Sales	1	17	43	23	W4M	Orifice, NPS 4 & Turbine, T30	6205



ORDER AO-001-GC-123

IN THE MATTER OF the *National Energy Board Act* (NEB Act) and the regulations made thereunder; and

IN THE MATTER OF an application filed on 20 September 2016 (Application), by NOVA Gas Transmission Ltd. (NGTL) under section 21 of the NEB Act to vary Certificate of Public Convenience and Necessity GC-123 filed with the National Energy Board (Board) under File OF-Fac-Gas-N081-2013-17 03.

BEFORE the Board on 3 November 2016.

WHEREAS on 16 December 2014 the Board issued Certificate of Public Convenience and Necessity (CPCN) GC-123 authorizing the operation of the ATCO Transferred Assets as a component of the Integration Asset Transfer Project (Project);

AND WHEREAS the Project involved the exchange of assets between NGTL and ATCO Gas and Pipelines Ltd. (ATCO Pipelines), where NGTL is to purchase the ATCO Transferred Assets from ATCO Pipelines;

AND WHEREAS NGTL was to acquire the ATCO Transferred Assets in four separate tranches;

AND WHEREAS on 20 September 2016, following the close of the fourth and final tranche on 1 September 2016, NGTL submitted a variance request to align the list of assets approved in CPCN GC-123 with the smaller set of approved assets transferred;

AND WHEREAS a variance is not subject to environmental assessment under the *Canadian Environmental Assessment Act, 2012*;

AND WHEREAS the Board is of the view that it is in the public interest to vary Certificate GC-123 to correctly reflect the assets transferred to NGTL;

AND WHEREAS the Governor in Council, by Order in Council No. P.C. 2017-1694 dated the 15 December 2017, has approved the issuance of Order AO-001-GC-123 amending Certificate GC-123;

IT IS ORDERED that, pursuant to section 21 of the NEB Act, Schedule A of the Order is revoked and replaced by Schedule A, attached hereto.

.../2

IT IS FURTHER ORDERED that CPCN GC-123, as amended, remains fully in force and the approved Project, as varied by this Amending Order, continues to be subject to the terms and conditions found therein.

Issued at Calgary, Alberta, on 27 December 2017.

NATIONAL ENERGY BOARD

Original signed by S. Wong for

Sheri Young
Secretary of the Board

AO-001-GC-123

SCHEDULE A
for the ATCO Transferred Assets
National Energy Board Certificate AO-001-GC-123

NOVA Gas Transmission Ltd. (NGTL)
Application dated 20 September 2016
assessed pursuant to subsection 21(2) of the *National Energy Board Act*
Vary list of Alberta System Facilities in Schedule A of GC-123

Integration Asset Transfer Project
File OF-Fac-Gas-N081-2013-17 03

TRANCHE 1**Pipe Segments**

Pipe Segment Name	Length (km)	Size (mm)	WT (mm)	MOP (kPa)	Grade	External Coating	Start Location					End Point				
							LSD	SEC	TWP	RGE	MER	LSD	SEC	TWP	RGE	MER
Oyen Town Line	0.44	42.2	3.56	6720	A	Enamel	2	3	28	4	W4	15	34	27	4	W4
Cessford Transmission Line	2.16	42.2	3.56	6390	BW1	Enamel.	5	25	23	12	W4	11	36	23	12	W4
Slave Lake Pulp Lateral	3.9	88.9	3.2	8160	2901	Yellow	4	16	72	4	W5	10	22	72	4	W5

Meter Stations

Meter Station Name	Start Location					Meter Type and Size	MOP (kPa)
	LSD	SEC	TWP	RGE	MER		
Slave Lake Pulp Delivery	12	22	72	4	W5M	168 mm T-30 Turbine, 168 mm Orifice	8160
Sheerness Powerplant Del.	16	32	28	13	W4M	AAT-30 Turbine	8450

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TRANCHE 2**Pipe Segments**

Pipe Segment Name	Length (km)	Size (mm)	WT (mm)	MOP (kPa)	Grade	External Coating	Start Location						End Point					
							LSD	SEC	TWP	RGE	MER	LSD	SEC	TWP	RGE	MER		
Hoggard Creek Transmission	4.39	219.1	4	9930	3592	Yellow	5	11	69	22	W5	1	1	69	22	W5		
Hoggard Creek Transmission	0.16	219.1	5.6	9930	3591	Yellow	1	1	69	22	W5	4	6	69	21	W5		

TRANCHE 3**Pipe Segments**

Pipe Segment Name	Length (km)	Size (mm)	WT (mm)	MOP (kPa)	Grade	External Coating	Start Location				End Point					
							LSD	SEC	TWP	RGE	MER	LSD	SEC	TWP	RGE	MER
Gem Transmission Line	1.69	42.2	3.56	6620	BW1	Enamel	2	8	23	16	W4	16	8	23	16	W4
Hussar Transmission Line	7.94	60.3	3.91	6620	UUUU	Enamel	8	32	24	19	W4	4	13	24	20	W4
Cremona Transmission Line	2.9	42.2	3.56	6390	BW1	Enamel	4	34	29	4	W5	12	3	30	4	W5
Lundbreck-Cowley Transmission	8.06	42.2	3.56	6520	A	Yellow Jacket	10	7	7	2	W5	16	14	7	2	W5
Lomond Transmission	14.14	42.2	2.16	3100	T1A	Yellow Jacket	12	7	15	20	W4	10	14	16	20	W4
Rocky Mountain House Forest Products Lateral	1.96	60.3	3.9	9930	2901	Yellow	12	1	38	9	W5	5	2	38	9	W5

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TRANCHE 4

Pipe Segments

Pipe Segment Name	Length (km)	Size (mm)	WT (mm)	MOP (kPa)	Grade	External Coating	Start Location						End Point					
							LSD	SEC	TWP	RGE	MER	LSD	SEC	TWP	RGE	MER		
Grande Cache	0.17	219.1	5.56	6550	X46	Tape	12	5	63	25	W5	9	6	63	25	W5		
Grande Cache	0.25	219.1	7.04	6550	X42	Tape	15	10	58	8	W6	14	10	58	8	W6		
Grande Cache	0.01	168.3	4.78	6550	2901	Yellow	14	10	58	8	W6	14	10	58	8	W6		
Grande Cache	0.06	219.1	8.18	6550	B	RY/YJ	9	6	63	25	W5	9	6	63	25	W5		
Grande Cache	0.06	168.3	7.11	6550	B	Yellow	9	6	63	25	W5	9	6	63	25	W5		
Grande Cache	0.1	219.1	8.18	8280	B	RY/YJ	9	6	63	25	W5	9	6	63	25	W5		
Grande Cache	0.35	168.3	5.6	6550	3592	Yellow	12	10	58	8	W6	13	10	58	8	W6		
Grande Cache	6.59	219.1	5.6	9930	3592	RY/YJ	13	10	58	8	W6	8	25	58	8	W6		
Grande Cache	2.81	219.1	6.4	9930	3592	RY/YJ	8	25	58	8	W6	9	31	58	7	W6		
Grande Cache	2.74	219.1	5.6	9930	3592	RY/YJ	9	31	58	7	W6	10	4	59	7	W6		
Grande Cache	4.31	219.1	6.4	9930	3592	RY/YJ	11	4	59	7	W6	3	14	59	7	W6		
Grande Cache	1.3	219.1	5.6	9930	3592	RY/YJ	3	14	59	7	W6	9	14	59	7	W6		
Grande Cache	9.66	219.1	4.8	9930	3592	RY/YJ	9	14	59	7	W6	10	34	59	6	W6		
Grande Cache	1.27	219.1	5.6	9930	3592	RY/YJ	10	34	59	6	W6	14	35	59	6	W6		
Grande Cache	0.93	219.1	4.8	9930	3592	RY/YJ	14	35	59	6	W6	1	2	60	6	W6		
Grande Cache	0.16	219.1	5.6	9930	3592	RY/YJ	1	2	60	6	W5	1	2	60	6	W6		
Grande Cache	1.33	219.1	4.8	9930	3592	RY/YJ	1	2	60	6	W6	11	1	60	6	W6		
Pipe Segment Name	Length (km)	Size (mm)	WT (mm)	MOP (kPa)	Grade	External Coating	LSD	SEC	TWP	RGE	MER	LSD	SEC	TWP	RGE	MER		
Grande Cache	0.26	219.1	5.6	9930	3592	RY/YJ	11	1	60	6	W6	10	1	60	6	W6		
Grande Cache	11.24	219.1	4.8	9930	3592	RY/YJ	10	1	60	6	W6	16	26	60	5	W6		
Grande Cache	0.85	273.1	5.6	9930	3592	RY/YJ	16	26	60	5	W6	5	36	60	5	W6		
Grande Cache	1.97	273.1	6.4	9930	3592	RY/YJ	5	36	60	5	W6	13	31	60	4	W6		
Grande Cache	2.57	273.1	5.6	9930	3592	RY/YJ	13	31	60	4	W6	3	5	61	4	W6		
Grande Cache	2.51	273.1	6.4	9930	3592	RY/YJ	3	5	61	4	W6	8	4	61	4	W6		
Grande Cache	1.5	273.1	7.8	9930	3592	RY/YJ	1	4	61	4	W6	2	3	61	4	W6		
Grande Cache	0.59	273.1	6.4	9930	3592	RY/YJ	2	3	61	4	W6	4	2	61	4	W6		
Grande Cache	24.42	273.1	5.6	9930	3592	RY/YJ	4	2	61	4	W6	9	24	61	2	W6		
Grande Cache	0.95	219.1	5.6	9930	3592	RY/YJ	9	24	61	2	W6	14	19	61	1	W6		
Grande Cache	29.55	273.1	5.6	9930	3592	RY/YJ	14	19	61	1	W6	9	6	63	25	W5		

AO-001-GC-123

Pipe Segment Name	Length (km)	Size (mm)	WT (mm)	MOP (MPa)	Grade	External Coating	Start Location				End Point					
							LSD	SEC	TWP	RGE	MER	LSD	SEC	TWP	RGE	MER
Grande Cache	0.07	168.3	5.6	9930	3592	Yellow	4	7	61	2	W6	4	7	61	2	W6
Grande Cache	0.04	219.1	8.2	9930	3592	RY/YJ	6	15	61	2	W6	6	15	61	2	W6
Grande Cache	0.01	273.1	8.7	9930	3592	RY/YJ	6	34	61	1	W6	6	34	61	1	W6
Grande Cache	0.03	273.1	8.7	9930	3592	RY/YJ	14	11	62	27	W5	14	11	62	27	W5
Grande Cache	2.13	114.3	3.18	6550	X42	Yellow Jacket	10	18	57	8	W6	5	8	57	8	W6
Grande Cache	1.28	114.3	3.18	6550	X42	Yellow Jacket	5	8	57	8	W6	12	5	57	8	W6
Grande Cache	0.25	114.3	3.18	6550	X42	Yellow Jacket	12	5	57	8	W6	11	5	57	8	W6
Grande Cache	0.1	114.3	3.18	6550	X42	Yellow	11	5	57	8	W6	6	5	57	8	W6
Grande Cache	0.29	42.2	3.58	6550	2411	Yellow Jacket	4	8	57	8	W6	16	6	57	8	W6
Grande Cache	0.18	114.3	4.8	6550	2901	Yellow	6	5	57	8	W6	2	5	57	8	W6
Grande Cache	0.48	114.3	6	6550	3591	Yellow	6	5	57	8	W6	2	5	57	8	W6
Grande Cache	0.6	114.3	6	6550	3592	Yellow Jacket	14	10	58	8	W6	13	10	58	8	W6
Grande Cache	2.55	114.3	4.8	6550	3592	Yellow	13	10	58	8	W6	12	4	58	8	W6
Grande Cache	3.1	114.3	4.8	6550	2901	Yellow Jacket	1	5	58	8	W6	11	29	57	8	W6
Grande Cache	0.86	114.3	4.8	6550	3591	Yellow Jacket	12	4	58	8	W6	1	5	58	8	W6
Grande Cache	3.65	114.3	3.18	6550	X42	Yellow	11	29	57	8	W6	10	18	57	8	W6

Meter Stations

Meter Station Name	Start Location				Meter Type and Size	MOP (MPa)
	LSD	SEC	TWP	RGE		
Grande Cache Mine Delivery-SCADA	13	10	58	8	168 mm Orifice	6550
HR Milner Power Plant Delivery-SCADA	14	10	58	8	219 mm Orifice, 168 mm AAT-35 Turbine	6550
Bluesky Receipt	1	36	60	3	168 mm Orifice; 60 mm Orifice (buyback)	9930
Bolton Creek Receipt	4	5	61	3	168 mm Orifice	9650
Jayar Receipt	4	5	61	3	88 mm Orifice	9650
Prairie Creek Receipt	16	26	60	5	219 mm AAT-60 Turbine; 60 mm Orifice (buyback)	9930
Rocky Creek Receipt	6	15	61	2	168 mm Orifice; 88 mm Orifice (buyback)	9930

AO-001-GC-123

King, Kim J M JAG:EX

From: Minister, AG AG:EX
Sent: Thursday, January 25, 2018 11:16 AM
To: King, Kim J M JAG:EX; Mbao, Chansa JAG:EX
Subject: FW: National Energy Board - Letter of Decision and Hearing Order MH-001-2018 to MH-016-2018 to Trans Mountain Pipeline ULC - Detailed Route - Segment 5 - Trans Mountain Expansion
Attachments: A89486-1 NEB Letter of Decision - Trans Mountain - Detailed Route - Segment 5 - Trans Mountain Expansion - A5Z5I2.pdf; A89487-1 NEB Letter - HO - Trans Mountain - Detailed Route - Segment 5 - Trans Mountain Expansion - A5Z5I5.pdf; A89487-3 NEB HO - Trans Mountain - Detailed Route - Segment 5 - Trans Mountain Expansion - A5Z5I7.pdf

Enclosed for service upon you an English version of the Letter of Decision, Hearing Order and its appendices and cover letter.

From: Barnachea, Sheryll [<mailto:SBarnachea@osler.com>]
Sent: Thursday, January 25, 2018 11:06 AM
To: bgormley@cga.ca; catherine.Mckenna@parl.gc.ca; cballard.mpp.co@liberal.ola.org; chevnon@cepa.com; davecore@caepla.org; david.zimmer@ontario.ca; doug.larder@auc.ab.ca; dpodruzny@canadianchemistry.ca; ec.enviroinfo.ec@canada.ca; Minister, EMPR EMPR:EX; ENERGYMINISTER@novascotia.ca; FisheriesProtection@dfo-mpo.gc.ca; gthibeault.mpp.co@liberal.ola.org; Helene.Laurendeau@aadnc-aandc.gc.ca; info@explorersandproducers.ca; jack.shaw@gov.ab.ca; Minister, AG AG:EX; jgoudy@scottpetrie.com; jim.crone@gov.mb.ca; Jody.Wilson-Raybould@parl.gc.ca; jus.minister@gov.sk.ca; justice@gov.nl.ca; justice@gov.nu.ca; JUSTMIN@novascotia.ca; lee.bell-smith@gnb.ca; louis.sebert@gov.nt.ca; mabaye.dia@pc.gc.ca; marchi@electricity.ca; meli-kanayuk@gov.nu.ca; minister.econ@gov.sk.ca; minister.moecc@ontario.ca; minister@aadnc-aandc.gc.ca; ministre@justice.gouv.qc.ca; ministre@mern.gouv.qc.ca; ministryofjustice@gov.ab.ca; minjus@leg.gov.mb.ca; Nathalie.G.Drouin@justice.gc.ca; NRMinister@gov.nl.ca; Jeakins, Paul OGC:IN; paulmolloy@gov.nl.ca; pjblggar@gov.pe.ca; premier.taptuna@gov.nu.ca; Ranj.Pillai@gov.yk.ca; Rick.Doucet@gnb.ca; Robert.C.McLeod@gov.nt.ca; schultz@capp.ca; srahbar@igua.ca; stevenbonkmla@sasktel.net; sthorne@gov.pe.ca; Tracy.McPhee@gov.yk.ca; tracy.utting@ceaa-acee.gc.ca; vince@energyontario.ca; vogel@cohenhighley.com; ynaqvi.mpp@liberal.ola.org
Subject: National Energy Board - Letter of Decision and Hearing Order MH-001-2018 to MH-016-2018 to Trans Mountain Pipeline ULC - Detailed Route - Segment 5 - Trans Mountain Expansion
Trans Mountain Pipeline ULC

Detailed Route Hearings for Segment 5

File Number OF-Fac-Oil-T260-2013-03 17

Dear Sir/Madam,

Pursuant to the National Energy Board's Letter of Decision and Hearing Orders MH-001-2018 to MH-016-2018, please find enclosed for service upon you an English version of the Letter of Decision, Hearing Order and its appendices and cover letter.

The documents can also be viewed at receipts A89487 and A89486 or at the following links:

Letter, Hearing Order and Appendices

<https://apps.neb-one.gc.ca/REGDOCS/Item/Filing/A89487>

Letter of Decision

<https://apps.neb-one.gc.ca/REGDOCS/Item/Filing/A89486>

A French version of the filings is also available at the links.

Regards,

Sheryll

Sent on behalf of:

Shawn Denstedt, Q.C.

OSLER

Sheryll Barnachea
Legal Assistant to Terri-Lee Oleniuk, Sander Duncanson,
Jessica Kennedy and Mark Graham
403.592.7289DIRECT
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de le divulguer sans autorisation.

National Energy
Board



Office national
de l'énergie

LETTER OF DECISION

File OF-Fac-Oil-T260-2013-03 17
23 January 2018

To: All persons listed in Appendices 1 and 2

**Trans Mountain Pipeline ULC (Trans Mountain)
Trans Mountain Expansion Project (TMEP)
Certificate of Public Convenience and Necessity OC-064 (Certificate)
Letter of Decision on the filed statements of opposition to the proposed detailed
route of the pipeline for Segment 5**

Background information

On 19 May 2016, the National Energy Board (NEB or Board) issued a report recommending that the Governor in Council approve the TMEP, subject to 157 conditions ([A77045](#)). On 29 November 2016, the Governor in Council approved the TMEP and directed the Board to issue the Certificate.

On 9 December 2016, Trans Mountain filed its sample Plan, Profile, and Book of Reference (PPBoR) page, sample notices for service, and its publication plan ([A80988](#)). On 10 February 2017, the Board approved these documents ([A81698](#)).

With that approval, Trans Mountain began publishing notices with information about the detailed route approval process in local newspapers along the pipeline route, and providing to various Aboriginal groups a copy of the publication notice and the Board's 10 February 2017 letter. In a 16 June 2017 letter to the Board ([A84459](#)), Trans Mountain noted that 6 June 2017 was the final publication date in local newspapers. As provided in subsection 34(4) of the *National Energy Board Act* (NEB Act), persons, other than an owner of lands who anticipates that their lands may be adversely affected, had 30 days from 6 June 2017 to file a statement of opposition with the Board.

Trans Mountain was also required to provide hard copies of the relevant segmented PPBoR filings to local libraries, municipal offices, and Indian Band offices, and to include in the published notices details of the locations where the PPBoR filings could be viewed.

.../2

Suite 210, 517 Tenth Avenue SW
Calgary, Alberta T2R 0A8

517, Dixième Avenue S.-O., bureau 210
Calgary (Alberta) T2R 0A8

Canada

Telephone/Téléphone : 403-292-4800
Facsimile/Télexcopieur : 403-292-5503
www.neb-one.gc.ca
Telephone/Téléphone : 1-800-899-1265
Facsimile/Télexcopieur : 1-877-288-8803

Trans Mountain also began serving written notice to landowners whose lands will be crossed by the pipeline. In each case, this notice showed where the detailed route is proposed to cross the landowner's property, and provided information on how the landowner could oppose the proposed route. Trans Mountain set out the last dates of personal service for each segment of the detailed route in its 18 July 2017 letter to the Board ([A85005](#)). In accordance with subsection 34(3) of the NEB Act, landowners had 30 days from the date of personal service to file a statement of opposition with the Board.

As of February 2017, the Board has made information available on its website about the NEB Act requirements for a statement of opposition, a template with additional instructions, as well as filing instructions. Process Advisors have been available by email or phone to provide one-on-one support and to answer any questions about the requirements and how to file the statement of opposition with the Board. Process Advisors also held online tutorials about the detailed route approval process and statements of opposition.

The Board received statements of opposition from a total of 452 interested persons along the entire TMEP detailed route.

Separate Letters of Decision on statements of opposition have been released for the following:

- Segments 1 and 2 on 31 August 2017 ([A85762](#))
- Segment 7 on 4 October 2017 ([A86548](#))
- Segments 3 and 4 on 16 November 2017 ([A87884](#))

A Letter of Decision on the statements of opposition for Segment 6 will be issued at a later date.

Detailed route hearings for Segment 5

On 10 March 2017, Trans Mountain filed with the Board the specific sections of the PPBoR for Segment 5 of the proposed TMEP pipeline route ([A82031](#)).

This Letter of Decision only considers those statements of opposition filed for Segment 5. In total, the Board received 28 statements of opposition from interested persons in relation to tracts in this segment. Four statements of opposition were subsequently withdrawn. The Board notes that Trans Mountain did not file comments in relation to any of the statements of opposition filed for Segment 5.

An additional statement of opposition was filed by Debbie and Greg Dixon. The Dixons' lands fall within Sub-segment 5.4, which is the subject of a 10 March 2017 NEB Act section 21 application from Trans Mountain for a variance to the approved pipeline corridor ([A82034](#)). In its 10 March 2017 PPBoR filing, Trans Mountain requested that the Board commence its PPBoR process for this sub-segment concurrently with the review of the associated variance application. On 26 June 2017, the Board advised Trans Mountain that it would not consider the affected PPBoR segments at the same time as the review of the variance applications ([A84643](#)). At this time, there has been no Governor in Council approval of the variance application and; therefore,

the Board will not deal with the statement of opposition of Debbie and Greg Dixon at this time. The Board will issue a separate letter to the Dixons in this regard.

Overview of the Board's assessment of statements of opposition for Segment 5

When assessing the statements of opposition, the Board applied the criteria provided in subsections 34(3), 34(4), and 36(1) of the NEB Act. Its assessment was based on the information provided in the statements of opposition. The Board considered:

- 1) if the person opposing is a landowner as defined under subsection 34(3) of the NEB Act, or a person, other than an owner of lands, who anticipates that their lands may be affected as defined under subsection 34(4) of the NEB Act;
- 2) if the opposition was about the location of the detailed route, or the timing and/or the methods of construction; and
- 3) if the opposition was filed on time according to subsections 34(3) and 34(4) of the NEB Act.

Statements of opposition that met the requirements of the NEB Act

The Board finds that the statements of opposition of 16 interested persons in relation to tracts in Segment 5 met the requirements of the NEB Act. The Board has granted an individual detailed route hearing for each of the Landowners or Affected Persons listed below (also listed in Appendix 1 to this Letter of Decision):¹

- Diane and Grant Hoffman
- Nestlé Canada Inc.
- 1054408 BC Ltd.
- Eleonora Anderson
- Compulogic Systems Inc. (Black Diamond Ranch)
- 89 Cattle Co. Ltd.
- Pembina Pipeline Corporation
- Sugarloaf Ranches Ltd.
- KGHM Ajax Mining Inc.
- Westcoast Energy Inc.
- Noela Champagne and Douglas Bain
- Ildeberto Jose and Shelley Ann Kathrine Demelo
- Coldwater Indian Band
- Stk'emlupsemc te Secwepemc of the Secwepemc Nation
- Juliann Kimoff
- Rosanne Kimoff

The Board issued a single Hearing Order on 23 January 2018, which is applicable to all of the individual detailed route hearings for Segment 5.

¹ Note that, where a particular listing contains a group of names, only one detailed route hearing has been granted (e.g., Diane and Grant Hoffman).

If you have been granted a hearing, you should refer to the Hearing Order, which Trans Mountain will provide to you, for information about your role and responsibilities as a Landowner or Affected Person in a detailed route hearing.

Note that, even though you have been granted a detailed route hearing, as detailed in Section 3 of the Hearing Order, you must register for your hearing by creating an online NEB account and filing an Application to Participate through the Board's Participation Portal.

The Hearing Order also includes all the steps and deadlines you need to be aware of in the hearing process. Further, the Hearing Order assigns an individual number for each detailed route hearing, starting at MH-001-2018 and ending at MH-016-2018. Your individual number is also included in Appendix 1 of this Letter of Decision.

Being granted a detailed route hearing does not prevent you and Trans Mountain from continuing to negotiate or consult. The Board offers additional support to support dialogue between a company and Landowners or Affected Persons. For instance, you may be interested in the Board's Alternative Dispute Resolution (ADR) process.

An ADR process is uniquely tailored to individual needs and could take the form of a meeting between the Landowner or Affected Person, and Trans Mountain. To take advantage of ADR, both the Landowner or Affected Person, and Trans Mountain, must agree to take part. This process is voluntary and facilitated by trained Board staff, or by another neutral third party. The facilitator will assist those participating in ADR to develop a process that may help resolve issues related to a statement of opposition.

If you are interested in the Board's ADR services, a session can be scheduled at a location and time agreeable to the Landowner or Affected Person, and Trans Mountain. For more information about ADR options, please email ADR-MRD@neb-one.gc.ca or call 1-800-899-1265 (toll-free).

Statements of opposition that did not meet the requirements of the NEB Act

The Board has determined that eight statements of opposition in Segment 5 did not meet the requirements of the NEB Act. These were filed by those listed below (and also in Appendix 2):

- Agnes Jackson
- Sean Morriss
- 0754001 BC Ltd.
- Tamihi Reforestation & Farming Ltd.
- Larry MacLaren
- Juanita Bouwmeester-Nicholson
- Roxanne Snook
- Douglas Janicki

These statements of opposition did not meet the criteria set out in the NEB Act for one or more of the following reasons:

- Lacking sufficient information for the Board to make a determination.
- Comments and information are of a general nature and did not demonstrate that the opposition was related to the location of the detailed route, the timing, or the methods of construction.
- Unclear about the impact of the proposed TMEP detailed route on the lands, or the interests in lands, of the person who filed the statement of opposition.
- Concerns are outside of the detailed route process (e.g., compensation).

The Board does not have the authority to determine compensation for Landowners.

Compensation matters are within the authority of the Minister of Natural Resources Canada in accordance with Part V of the NEB Act. Sections 88 and 90 of the NEB Act provide that parties have the right to apply to the Minister for negotiation and binding arbitration. For information about compensation matters, contact Natural Resources Canada at PAS-SAG@NRCan-RNCan.gc.ca or visit their [website](#).

Other opportunities to participate in a detailed route hearing

As outlined in the Hearing Order issued on 23 January 2018, there will be an opportunity for any person to apply to participate as a commenter or intervenor in any of the individual detailed route hearings for Segment 5. This can be done online by creating an online [NEB account](#) and filing an Application to Participate using the Board's Participation Portal by **11:00 am Pacific Time (noon Mountain Time) on 23 February 2018**. Complete instructions are provided in Section 3 of the Hearing Order. The Board will determine who will be allowed to participate as a commenter or intervenor in each of the detailed route hearings.

If you have any questions regarding the Hearing Order, please contact the Board's Process Advisor Team for the detailed route hearings by emailing TMX.ProcessHelp@neb-one.gc.ca or calling 1-800-899-1265 (toll-free).

Trans Mountain's service and notification requirements

The Board directs Trans Mountain to serve, by **3:00 pm Pacific Time (4:00 pm Mountain Time) on 2 February 2018**, a copy of this Letter of Decision and the Hearing Order (including its appendices and cover letter) on all persons listed in Appendices 1 and 2 to this Letter of Decision.

Further notification requirements, including those regarding the publication of the Notice of Detailed Route Hearings and providing information to Aboriginal groups, are detailed in Sections 2.6 and 2.7 of the Hearing Order.

For any questions regarding this Letter of Decision or the detailed route hearing process, please contact the Board's Process Advisor Team by email at TMX.ProcessHelp@neb-one.gc.ca or by phone at 1-800-899-1265 (toll-free).

Yours truly,

Original signed by L. George for

Sheri Young
Secretary of the Board

Attachments

- c.c. Mr. D. Scott Stoness, Vice President, Regulatory and Finance, Kinder Morgan Canada Inc.,
Email Regulatory@transmountain.com
Mr. Shawn H.T. Denstedt, Counsel for Kinder Morgan Canada Inc.,
Email Regulatory@transmountain.com
Ms. Terri-Lee V. Oleniuk, Counsel for Kinder Morgan Canada Inc.,
Email Regulatory@transmountain.com

Appendix 1 List of Landowners and Affected Persons who met the requirements of the NEB Act

Note that each of those listed below is granted an individual detailed route hearing²

First name(s)	Last name(s)	Seg	Landowner or Affected Person	Address	PEBoR sheet number(s)	Tracto number(s)	RegDocs number	Individual Hearing number
Diane and Grant	Hoffman	5	Landowner	PO Box 118 Knutsford, BC V0E 2A0	M002-PM03011-018	1643	A84016	MH-001-2018
Nestlé Canada Inc.		5	Landowner	c/o Bruce Lauerman 66700 Othello Rd. Hope, BC V0X 1L1	M002-PM03011-078	1964	A84157	MH-002-2018
				Gordon Nettleton McCarthy Tétrault LLP 4000, 421 7 th Ave. SW Calgary, AB T2P 4K9				
1054408 BC Ltd.		5	Landowner	c/o Mark Steele 8387 Young Rd. Chilliwack, BC V2P 4N8	M002-PM03013-002	2008	A84015	MH-003-2018
				59850 Hunter Creek Rd. Hope, BC V0X 1A0				
Eleonora	Anderson	5	Landowner	Bruce Davies Waterstone Law Group 201 – 45793 Luckakuck Way Chilliwack, BC V2R 5S3	M002-PM03013-009	2086	A83890	MH-004-2018
Compulogic Systems Inc. (Black Diamond Ranch)		5	Landowner	c/o Gerald Gelderman 333 Gillis Rd. Kingsvale, BC V1K 1B8	M002-PM03011-046	PC: 7117.04	A83823	MH-005-2018

² Where a particular listing contains a group of names, only one detailed route hearing has been granted (e.g., Diane and Grant Hoffman).

First name(s)	Last name(s)	Seg.	Landowner or Affected Person	Address	PPR sheet number(s)	Tract number(s)	RegDocs number	Individual Hearing number
89 Cattle Co. Ltd.		5	Landowner	c/o Sheila Chalmers and Christian Mundhenk 7681 Westsyde Rd. Kamloops, BC V2B 8S1	M002-PM03011-002	1375 1377 1379	A82466	MH-006-2018
Pembina Pipeline Corporation		5	Landowner	c/o John Stevenson 4000, 585 – 8 th Ave. SW Calgary, AB T2P 1G1	M002-PM03011-012	1608 ADJ: 257	A83861	MH-007-2018
Sugarloaf Ranches Ltd.		5	Landowner	c/o Chris Wild 124 Seymour St. Kamloops, BC V2C 2E1 Sandor Sajinovic KGHM International Ltd. Suite 500, 200 Burrard St. Vancouver, BC V6C 3L6	M002-PM03011-013 M002-PM03011-014 M002-PM03011-015	1611 1612 PC: 7119 PC: 7120 PC: 7121 PC: 7124 PC: 7125 PC: 7126 PC: 7128 PC: 7129	A83627	MH-008-2018
KGHM Ajax Mining Inc.		5	Landowner	c/o Chris Wild 124 Seymour St. Kamloops, BC V2C 2E1 Sandor Sajinovic KGHM International Ltd. Suite 500, 200 Burrard St. Vancouver, BC V6C 3L6	M002-PM03011-013 M002-PM03011-014 M002-PM03011-015 M002-PM03011-016	1613 1614 1629 1630 1632 PC: 7122 PC: 7123 PC: 7130	A83626	MH-009-2018
Westcoast Energy Inc.		5	Landowner	c/o Robert Bourne Suite 200, 425 – 1 st St. SW Calgary, AB T2P 3L8	M002-PM03011-044 M002-PM03011-077 M002-PM03011-078 M002-PM03013-005	1762 1961 1962 2042	A83008	MH-010-2018
Noela Douglas	Champagne Bain	5	Landowner	8793 Westsyde Rd. Kamloops, BC V2B 8S4	M002-PM03009-002	ADJ: 286.11	A82987	MH-011-2018

First name(s)	Last name(s)	Seg.	Landowner or Affected Person	Address	PPBoR sheet number(s)	Tract number(s)	Reg Docs number	Individual Hearing number
Ildeberto Jose and Shelley Ann Kathrine	Demelo	5	Landowner	8845 Westsyde Rd. Kamloops, BC V2B 8P6	M002-PM03009-001	ADJ: 286.14	A82728	MH-012-2018
Coldwater Indian Band		5	Aboriginal group	c/o Chief Lee Spahian 2249 Quilchena Ave. PO Box 4600 Stn Main Merritt, BC V1K 1B8 Emma Hume Ratcliff & Company LLP 500 – 221 West Esplanade North Vancouver, BC V7M 3J3	n/a	n/a	A82510	MH-013-2018
Skt'emlupsemc te Secwepemc of the Secwepemc Nation		5	Aboriginal group	Sarah Hansen Miller Thompson LLP Suite 1000, 840 Howe St. Vancouver, BC V6Z 2M1	n/a	n/a	A82838	MH-014-2018
Julianne	Kimoff	5	Landowner	5680 Lochside Dr. Victoria, BC V8Y 3H7	M002-PM03011-045	1764.02	A83878	MH-015-2018
Rosanne	Kimoff	5	Landowner	6656 Welch Rd. Saanichton, BC V8M 1W6	M002-PM03011-045	1764.02	A83880	MH-016-2018

Appendix 2 - List of Landowners and Affected Persons who did not meet the requirements of the NEB Act

First name(s)	Last name(s)	Seg.	Landowner or Affected Person	Address	PPBoR sheet number(s)	Tract number(s)	Reg Docs number
Agnes	Jackson	5	Landowner	Box 285 Kamloops, BC V2C 5K6	M002-PM03011-019	1651	<u>A83675</u>
Sean	Morriss	5	Landowner	59850 Hunter Creek Rd. Hope, BC V0X 1L0	M002-PM03013-009	2086	<u>A83891</u>
0754001 BC Ltd.		5	Landowner	c/o Dan Coulter 54370 Bridal Falls Rd. Rosedale, BC V0X 1X1	M002-PM03013-016	2158	<u>A83187</u>
Tamihl Restoration & Farming Ltd.		5	Landowner	c/o Don Banasky Box 4, 14250 Morris Valley Rd. Harrison Mills, BC V0M 1L0	M002-PM03011-001	1370.02 1371	<u>A83613</u>
Larry	MacLaren	5	Affected Person	PO Box 109 Logan Lake, BC V0K 1W0	n/a	n/a	<u>A82287</u>
Juanita	Bouwmeester- Nicholson	5	Affected Person	PO Box 109 Logan Lake, BC V0K 1W0	n/a	n/a	<u>A82289</u>
Roxanne	Snook	5	Affected Person	21 Lakeshore Dr. Cultus Lake, BC V2R 4Z9	n/a	n/a	<u>A83333</u>
Douglas	Janicki	5	Affected Person	327 2 nd Ave. Cultus Lake, BC V2R 4Y6	n/a	n/a	<u>A83450</u>



File OF-Fac-Oil-T260-2013-03 17
23 January 2018

Mr. D. Scott Stoness
Vice President, Regulatory and Finance
Kinder Morgan Canada Inc.
Suite 2700, 300 – 5th Avenue SW
Calgary, AB T2P 5J2
Email regulatory@transmountain.com

Mr. Shawn H.T. Denstedt
Ms. Terri-Lee V. Oleniuk
Osler, Hoskin & Harcourt LLP
Suite 2500, 450 – 1st Street SW
Calgary, AB T2P 5H1
Email regulatory@transmountain.com

Dear Mr. Stoness, Mr. Denstedt, and Ms. Oleniuk:

**Trans Mountain Pipeline ULC (Trans Mountain)
Trans Mountain Expansion Project (TEMP)
Certificate of Public Convenience and Necessity OC-064 (Certificate)
Issuance of the National Energy Board's (Board) Letter of Decision on the
statements of opposition to the detailed route for Segment 5 and the Hearing Order**

On 19 May 2016, the Board issued a report recommending that the Governor in Council approve the TMEP, subject to 157 conditions ([A77045](#)). On 29 November 2016, the Governor in Council approved the TMEP and directed the Board to issue the Certificate.

On 10 March 2017, Trans Mountain filed with the Board the specific sections of the Plan, Profile, and Book of Reference (PPBoR) for Segment 5 of the proposed TMEP pipeline route ([A82031](#)).

As detailed in the table below, Segment 5 spans from Kilometre Post (KP) 806.5 (near McLure, British Columbia) to KP 1075.0 (near Rosedale, British Columbia). Segment 5 is subdivided into five sub-segments.

Sub-segment	Segment name	Start KP	End KP
5.1	Black Pines – Wahleach Segment 5.1	806.5	810.5
5.2	Black Pines – Wahleach Segment 5.2	810.5	810.6
5.3	Black Pines – Wahleach Segment 5.3	810.6	1038.0
5.4	Black Pines – Wahleach Segment 5.4	1038.0	1038.3
5.5	Black Pines – Wahleach Segment 5.5	1038.3	1075.0

.../2

Suite 210, 517 Tenth Avenue SW
Calgary, Alberta T2R 0A8

517, Dixième Avenue S.-O., bureau.210
Calgary (Alberta) T2R 0A8

Canada

Telephone/Téléphone : 403-292-4800
Facsimile/Télocopieur : 403-292-5503
www.neb-one.gc.ca
Telephone/Téléphone : 1-800-899-1265
Facsimile/Télocopieur : 1-877-268-8803

The Board issued a Letter of Decision on 23 January 2018 setting out its decisions on the statements of opposition filed in relation to Segment 5. The Board received 28 statements of opposition from interested persons in relation to tracts in this segment. Four statements of opposition were subsequently withdrawn. The Board found that the statements of opposition of 16 interested persons met the requirements of the *National Energy Board Act*, and it granted an individual detailed route hearing to each of them.

On 23 January 2018, the Board also issued the attached general Hearing Order applicable to all of the detailed route hearings for Segment 5. Each detailed route hearing has been assigned an individual number, starting at MH-001-2018 and ending at MH-016-2018. The Hearing Order provides instructions, timelines, and deadlines that are relevant to each detailed route hearing. It is important that Landowners or Affected Persons, Trans Mountain, and interested persons intending on applying to participate in a detailed route hearing refer to the Hearing Order for information about the specific detailed route hearing they are interested in.

In the Hearing Order, the Board also directs Trans Mountain to undertake various activities, including service, notification, and filings by specific deadlines.

Separate Letters of Decision on statements of opposition have been released for the following:

- Segments 1 and 2 on 31 August 2017 ([A85762](#))
- Segment 7 on 4 October 2017 ([A86548](#))
- Segments 3 and 4 on 16 November 2017 ([A87884](#)).

A Letter of Decision on the statements of opposition for Segment 6 will be issued at a later date.

For any questions regarding the Hearing Order, please contact the Board's Process Advisor Team for the detailed route hearings by emailing TMX.ProcessHelp@neb-one.gc.ca or calling 1-800-899-1265 (toll-free).

Yours truly,

Original signed by L. George for

Sheri Young
Secretary of the Board

Attachment



**Trans Mountain Pipeline ULC
Detailed route hearings for Segment 5 of the
Trans Mountain Expansion Project
Certificate of Public Convenience and Necessity OC-064**

File Number OF-Fac-Oil-T260-2013-03 17

Hearing Order for the following:

MH-001-2018	MH-002-2018	MH-003-2018	MH-004-2018
MH-005-2018	MH-006-2018	MH-007-2018	MH-008-2018
MH-009-2018	MH-010-2018	MH-011-2018	MH-012-2018
MH-013-2018	MH-014-2018	MH-015-2018	MH-016-2018

23 January 2018

Important information about this document

This document serves as the Hearing Order for each of the detailed route hearings listed below. Each Landowner or Affected Person granted a detailed route hearing, Trans Mountain Pipeline ULC, and any interested persons intending to apply to participate in a hearing should refer to this document as the Hearing Order for each of the individual hearings listed below and in Appendix 2.

This approach has been taken to facilitate efficiency and consistency in the detailed route hearing process for Segment 5.

Hearing number	Landowner or Affected Person
MH-001-2018	Diane and Grant Hoffman
MH-002-2018	Nestlé Canada Inc.
MH-003-2018	1054408 BC Ltd.
MH-004-2018	Eleonora Anderson
MH-005-2018	Compulogic Systems Inc. (Black Diamond Ranch)
MH-006-2018	89 Cattle Co. Ltd.
MH-007-2018	Pembina Pipeline Corporation
MH-008-2018	Sugarloaf Ranches Ltd.
MH-009-2018	KGHM Ajax Mining Inc.
MH-010-2018	Westcoast Energy Inc.
MH-011-2018	Noela Champagne, and Douglas Bain
MH-012-2018	Ildeberto Jose and Shelley Ann Kathrine Demelo
MH-013-2018	Coldwater Indian Band
MH-014-2018	Stk'emlupsemc te Secwepemc of the Secwepemc Nation
MH-015-2018	Julian Kimoff
MH-016-2018	Rosanne Kimoff

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Terms used throughout this document and the hearing process are defined in Appendix 1.

1 Background information

1.1 Trans Mountain Expansion Project detailed route process

The National Energy Board (NEB or Board) has a responsibility to regulate the construction and operation of certain interprovincial and international pipelines and power lines.

On 19 May 2016, the Board issued a report recommending that Governor in Council (GIC) approve the Trans Mountain Expansion Project (TMEP), subject to 157 conditions (A77045). The TMEP includes a twinning of the existing 1147 km-long Trans Mountain pipeline system in Alberta (AB) and British Columbia (BC) with approximately 981 km of new buried pipeline. It also includes new and modified facilities, such as pump stations, additional tanker loading facilities at the Westridge Marine Terminal in Burnaby, the reactivation of 193 km of pipeline between Edmonton and Burnaby, and increasing Trans Mountain's shipping capacity from 300,000 bbl/d to 890,000 bbd/d. The Board's report also included a general pipeline corridor for the TMEP.

On 29 November 2016, GIC approved the TMEP and directed the Board to issue Certificate of Public Convenience and Necessity OC-064 (Certificate).

Trans Mountain Pipeline ULC (Trans Mountain) has now applied to the Board for approval of its Plan, Profile, and Book of Reference (PPBoR), which details the proposed route of the pipeline (Proposed Route) within the approved general pipeline corridor for the TMEP. Trans Mountain divided the PPBoR into 7 segments, 4 of which are further divided into 25 sub-segments.

A three-member Panel of the Board was established to make decisions in determining the best possible detailed route of the pipeline and the most appropriate methods and timing of constructing the pipeline. Sections 34 to 37 of the *National Energy Board Act* (NEB Act) deal specifically with detailed route hearings.

In making its decisions, the Board will not reconsider matters that were addressed in the certificate hearing, such as the need for the TMEP, nor does the Board have the authority to determine compensation for Landowners.

Compensation matters are within the authority of the Minister of Natural Resources Canada in accordance with Part V of the NEB Act. Sections 88 and 90 of the NEB Act provide that parties have the right to apply to the Minister for negotiation and binding arbitration. For information about compensation matters, contact Natural Resources Canada at PAS-SAG@NRCan-RNCan.gc.ca or visit their [website](#).

As of the date of this Hearing Order, the Board received statements of opposition from a total of 452 interested persons for the entire proposed TMEP detailed route.

1.2 Detailed route hearings for Segment 5

The Board received 28 statements of opposition from interested persons in relation to tracts in Segment 5. Before the Board considered the filed statements of opposition, four were withdrawn. As detailed in the Board's 23 January 2018 Letter of Decision, the Board found that the statements of opposition of 16 interested persons met the requirements of the NEB Act, and the Board granted an individual detailed route hearing for each of them.

Those granted a hearing are referred to as Landowners or Affected Persons. Appendix 2 lists those Landowners and Affected Persons who have been granted a detailed route hearing. Although each person has been assigned an individual hearing number (MH-001-2018 to MH-016-2018) for their detailed route hearing, this document serves as the Hearing Order for all detailed route hearings listed in Appendix 2 and sets out the process to be followed.

If you are interested in participating in a particular detailed route hearing, different from your own, you can apply to do so. Section 3 of this Hearing Order, sets out how you can apply to participate in the detailed route hearings, either as a commenter or intervenor. This can be done by filing an Application to Participate using the Board's Participation Portal by **11:00 am Pacific Time (noon Mountain Time) on 23 February 2018**. The Board will consider the applications made and determine who will be allowed to participate as a commenter or intervenor in each of the hearings.

During the Board's detailed route hearings, it will receive written evidence which will be available on its website. The hearings will include an oral portion, which will allow for the testing of evidence filed by Trans Mountain, the Landowner or Affected Person, and intervenors (collectively referred to as Parties). The detailed route hearing process will also include final argument. The Board will review and consider all of the evidence, both written and oral, on the record before making its decisions. The Board relies only on the evidence on the record and consideration will only be given to evidence that is relevant to the List of Issues, attached as Appendix 8.

The steps and deadlines in the detailed route hearings, as outlined in this Hearing Order, are important to make sure the hearings are fair, transparent, and efficient, and that certainty is provided to all Participants (Participants include the Parties, as well as commenters).

2 Project information

2.1 What did Trans Mountain apply for?

On 17 and 24 February and 3, 10, and 17 March 2017, Trans Mountain applied to the Board for approval of the PPBoR, which details the Proposed Route. Trans Mountain divided the PPBoR into 7 segments, with 4 of those further divided into 25 sub-segments. The table below contains information related to the segments, including the starting and ending Kilometre Posts (KPs), the segment name, and the date that the relevant segments of the PPBoR were filed with the Board.

Trans Mountain has also filed applications pursuant to section 21 of the NEB Act for seven proposed variances (changes) to the approved TMEP general pipeline corridor. These applications are being dealt with in separate processes from the detailed route hearing process. For more information on these applications, visit the Board's [TMEP webpage](#).

Separate Letters of Decision on statements of opposition have been released for the following:

- Segments 1 and 2 on 31 August 2017 (A85762)
- Segment 7 on 4 October 2017 (A86548)
- Segments 3 and 4 on 16 November 2017 (A87884)

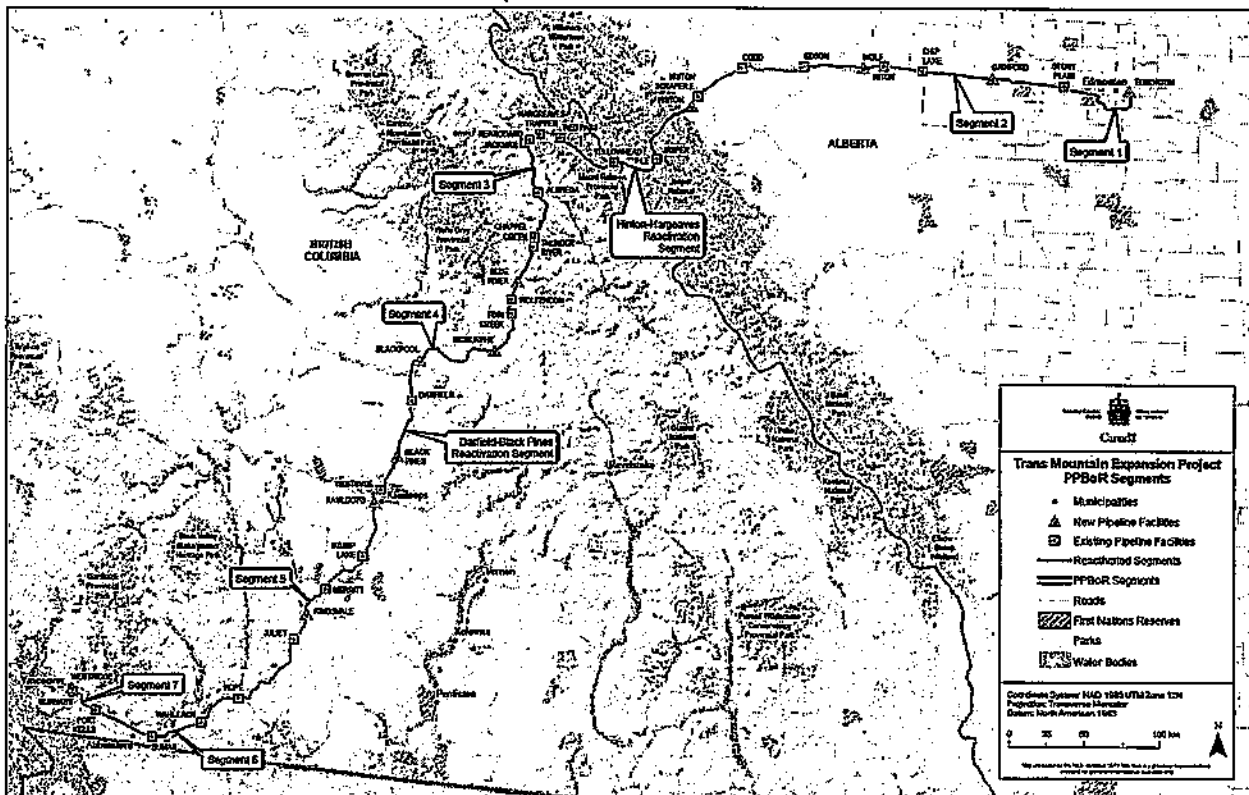
A Letter of Decision on the statements of opposition for Segment 6 will be issued at a later date and, if detailed route hearings are granted, a Hearing Order will also be issued.

Segment	Filing date (2017)	Segment name	Start KP	End KP
1.1	17 February	Edmonton Segment 1.1	0	25.8
1.2		Edmonton Segment 1.2	25.8	27.5
1.3		Edmonton Segment 1.3	27.5	35.2
1.4		Edmonton Segment 1.4	35.2	35.5
1.5		Edmonton Segment 1.5	35.5	49.0
2	24 February	Edmonton – Jasper Segment 2	49.0	338.0
3	3 March	Hargreaves – Blue River Segment 3	489.2	610.6
4		Blue River – Darfield Segment 4	610.6	764.6
5.1	10 March	Black Pines – Wahleach Segment 5.1	806.5	810.5
5.2		Black Pines – Wahleach Segment 5.2	810.5	810.6
5.3		Black Pines – Wahleach Segment 5.3	810.6	1038.0
5.4		Black Pines – Wahleach Segment 5.4	1038.0	1038.3
5.5		Black Pines – Wahleach Segment 5.5	1038.3	1075.0
6.1	17 March	Fraser Valley Segment 6.1	1075.0	1079.6
6.2		Chilliwack Segment 6.2	1079.6	1093.5
6.3		Chilliwack Segment 6.3	1093.5	1095.2
6.4		Chilliwack Segment 6.4	1095.2	1106.0
6.5		Abbotsford Segment 6.5	1106.0	1115.0
6.6		Abbotsford Segment 6.6	1115.0	1115.8
6.7		Abbotsford Segment 6.7	1115.8	1136.0
6.8		Langley Segment 6.8	1136.0	1155.7
7.1		Surrey Segment 7.1	1155.7	1159.0
7.2		Surrey Segment 7.2	1159.0	1162.7
7.3		Surrey Segment 7.3	1162.7	1166.7
7.4		Coquitlam Segment 7.4	1166.7	1170.2

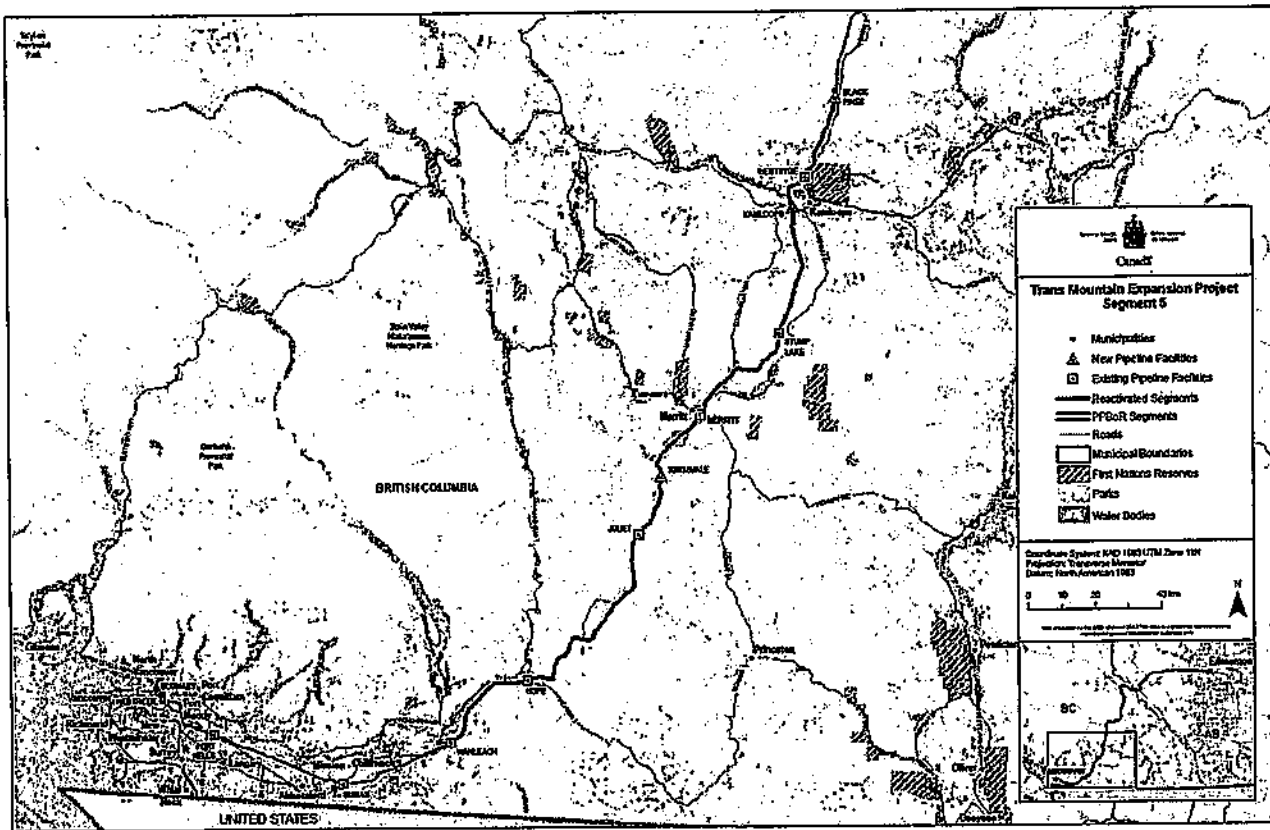
Segment	Filing date (2017)	Segment name	Start KP	End KP
7.5	3 March	Coquitlam Segment 7.5	1170.2	1170.6
7.6		Coquitlam Segment 7.6	1170.6	1174.7
7.7		Burnaby Segment 7.7	1174.7	1180.1

2.2 What are the various segments of the Proposed Route?

Map 1 – All segments



Map 2 – Segment 5



2.3 What is this document about?

This document is a Hearing Order for all of the detailed route hearings granted for Segment 5. It explains:

- your options for participating in the hearing;
- steps and deadlines;
- procedures;
- where you can get more information; and
- the issues that the Board will consider.

The Board may make changes to the information in this Hearing Order, clarify process, or provide additional details by issuing procedural updates.

2.4 Where can I see what Trans Mountain has applied for and get more information about the Proposed Route?

If you have Internet access, you can find Trans Mountain's PPBoR and related documents for the TMEP on the Board's website. If you do not have Internet access, you can find the PPBoR and related documents in the locations listed in Appendix 3. You can also ask Trans Mountain for a copy of the PPBoR and related documents.

You can find all filed documents on the Board's website. The only exceptions are when a document has been filed in hard copy and is too large to scan, or the Board has approved it as confidential information (see Section 5.6). Appendix 4 explains how you can find and file documents on the Board's website.

2.5 Where can I get help or more information?

Section 6 of this Hearing Order provides more information on the Board's resources that may be helpful to you. The Board's Process Advisors can provide you with information on the process and how to participate in it. Section 6.3 tells you how to contact a Process Advisor. Appendix 5 explains the role of the Process Advisor.

The Board's website also has helpful publications about the hearings. See Section 6.2 for more information.

2.6 Will the hearing information be given to landowners and published in newspapers?

Trans Mountain must serve, **by 3:00 pm Pacific Time (4:00 pm Mountain Time) on 2 February 2018**, a copy of the Board's 23 January 2018 Letter of Decision and this Hearing Order (including its appendices and cover letter) on all Landowners and Affected Persons listed in Appendix 2. Service of the Hearing Order on all these persons must be effected in the official language of the recipient's choice. Trans Mountain must file confirmation with the Board, **by 11:00 am Pacific Time (noon Mountain Time) on 12 February 2018**, as to the date of service and the method of service for each person listed in Appendix 2.

Trans Mountain must also place the above-noted documents on its website **by 3:00 pm Pacific Time (4:00 pm Mountain Time) on 29 January 2018**. This information will also be available on the Board's website.

Trans Mountain must publish, **no later than 6 February 2018**, the Notice of Detailed Route Hearings (Notice) for Segment 5 (attached as Appendix 6) in the publications listed below.

Publication name	Publication frequency	Location	Publication language	Notice language
Barriere-North Thompson Star Journal	Weekly (Thursday)	North Thompson Valley (including Clearwater and Valemount, BC)	English	English
Kamloops This Week	Twice weekly (Wednesday/Friday)	Kamloops, BC	English	English
Merritt Herald	Weekly (Thursday)	Merritt, BC	English	English
Hope Standard	Weekly (Thursday)	Hope, BC	English	English
La Source	Bi-weekly (6 February)	BC	French	French

Publication name	Publication frequency	Location	Publication language	Notice Language
Windspeaker.com	Online	National	English	English

The Notice must contain a map showing the proposed pipeline route for Segment 5, and an additional detailed map indicating the portion(s) of the route being opposed. The maps are to be consistent with the form approved by the Board in its letter of 10 February 2017 (A81698). Trans Mountain must also file with the Board confirmation that the Notices were published, including the date of publication, by **11:00 am Pacific Time (noon Mountain Time) on 12 February 2018**.

Trans Mountain must ensure that the published Notice meets the requirements of the Government of Canada's Federal Identity Program (for assistance, please contact FIP@neb-one.gc.ca). Visit the Board's [website](#) for more information.

2.7 Will the hearing information be given to Aboriginal peoples?

Trans Mountain must provide, by **3:00 pm Pacific Time (4:00 pm Mountain Time) on 2 February 2018**, the Board's 23 January 2018 Letter of Decision and this Hearing Order (including its appendices and cover letter) to all Aboriginal groups that were provided a copy of the PPBoR for Segment 5, and to any additional Aboriginal groups that Trans Mountain is presently consulting with in the area of Segment 5.

Trans Mountain must file with the Board, by **11:00 am Pacific Time (noon Mountain Time) on 12 February 2018**, confirmation that this notification is complete, including the dates on which notification was provided, the method used to provide notification, and a list of the Aboriginal groups that were notified.

2.8 Will the hearing information be given to government and other organizations?

The Board will email or mail a copy of this Hearing Order to those listed in Appendix 9.

3 Participation

3.1 Registration for Landowners and Affected Persons

Appendix 2 contains the list of Landowners and Affected Persons who have been granted a detailed route hearing for Segment 5.

Named Landowners and Affected Persons **must** register for their hearing by creating an online [NEB account](#) and filing an Application to Participate through the Board's Participation Portal (see Section 5.2 for information on filing documents).

Although a Landowner's or Affected Person's participation is guaranteed for its specific detailed route hearing, using the Participation Portal throughout the hearing will assist in efficiently filing

evidence and receiving information. If further assistance is required, you may contact a Process Advisor (see Section 6.3 for contact information).

3.2 How to apply to be a commenter or intervenor

If you have not been granted a detailed route hearing, or if you wish to participate in a particular detailed route hearing for Segment 5, you may apply to do so. In addition, if Landowners and Affected Persons who have been granted a detailed route hearing want to participate in the detailed route hearings of others, they must also apply to participate for those hearings. **If you want to participate in more than one detailed route hearing, you must apply for each one separately.**

The Board will determine who may participate in each of the detailed route hearings. To apply, you must create an online NEB account and file an Application to Participate using the Board's Participation Portal. All detailed route hearings open for applications are listed on the Board's website.

When you submit your Application to Participate, the Participation Portal will prompt you to provide your contact information, including your name, mailing address, address for personal or courier service (if different from your mailing address), telephone number, facsimile number and email address, if any. If you have an authorized representative, it will ask for their name and contact information as well.

Your Application to Participate must set out which detailed route hearing you are applying to participate in, and describe in some detail how your participation will assist the Board in making its decision. You must describe:

- which property or statement of opposition, as set out in Appendix 2, you intend to speak to at the detailed route hearing;
- your specific knowledge of, and information about, the land that is the subject of the specific detailed route hearing you are asking to participate in;
- the source of your knowledge and information (e.g., neighbour, proximity to the land subject to the detailed route hearing, a municipality in which the land is situated, a corporation, an Aboriginal person or community);
- your qualifications (e.g., specialist knowledge and experience);
- the extent to which your knowledge and information relates to the land that is the subject of the hearing (e.g., previous and current experience on or with the land);
- what supplementary information you may provide (e.g., detailed drawings, pictures, maps);
- how your participation will add value to or assist the Board in making its decision; and
- the official language in which you wish to be heard.

It is important that the information you provide is as complete as possible. In making a decision on your participation, the Board will only consider the information provided in your Application to Participate. An Application to Participate that is missing the information noted above could result in you not being granted permission to participate in the hearing.

When you apply, you must indicate how you want to participate. There are two participation options:

- 1) **Commenter** – you can tell the Board your views in writing within a single letter of comment (see Section 3.5)
- 2) **Intervenor** (see Section 3.6)

You must file your Application to Participate form with the Board by **11:00 am Pacific Time (noon Mountain Time) on 23 February 2018**. Section 5.2 of this Hearing Order provides more information on how to file your form.

3.3 Who will participate in the hearings?

The Board will consider all Applications to Participate and decide who may participate and how. The Board will issue a List of Participants no later than **2 March 2018**.

3.4 How can I stay informed of or monitor the hearing?

Anyone may monitor the process for a particular detailed route hearing by:

- reading information about this hearing on the Board's website (see Appendix 4);
- reading the evidence that has been filed on the Board's website;
- listening to live broadcasts of the oral hearing through the Board's website;
- attending the oral hearing in-person (the Board may determine that restrictions are necessary in this regard and will provide details in a future procedural update);
- reading the daily transcripts of the oral hearing; or
- signing up through the Board's website to receive e-mail updates.

Section 6.2 tells you how to stay informed using the Board's website. Section 6.5.1 explains how to get transcripts.

3.5 What do I write in my letter of comment?

If you apply and the Board approves you to be a commenter, you can tell the Board your views in writing by filing a single letter of comment. Your letter of comment should include:

- your name, mailing address, and phone number;
- the name of your organization, if you represent one;
- the individual hearing number (see Appendix 2) of the detailed route hearing you are participating in and file number OF-Fac-Oil-T260-2013-03 17;
- your knowledge of, and information about, the land that is the subject of the specific detailed route hearing;
- comments on how you will be impacted by the Proposed Route; and
- any information that explains or supports your comments.

Your letter of comment becomes part of the record for the detailed route hearing and is available on the public registry.

You will not be able to ask questions about other Participants' evidence or make final argument.

3.5.1 How can I file a letter of comment?

Only those who have been approved as commenters may file a letter of comment. To file a letter of comment, you must, by **11:00 am Pacific Time (noon Mountain Time) on 3 April 2018**, send your letter to the Board in one of these ways:

- online through the Participation Portal, using your NEB Account, which you set up when applying to participate in this hearing process;
- online using the "electronic document submission" tool on the Board's website (e-file); or
- by mail, fax, or courier (see Section 6.1 for contact information).

If you are not able to use the Participation Portal, you must also send a copy of your letter to all the Participants in the hearing that you are participating in at the addresses listed for them on the List of Participants, and also to Trans Mountain and its counsel at:

Mr. D. Scott Stoness
Vice President, Regulatory and Finance
Kinder Morgan Canada Inc.
Suite 2700, 300 – 5th Avenue SW
Calgary, AB T2P 5J2
Email regulatory@transmountain.com

Mr. Shawn H.T. Denstedt
Ms. Terri-Lee V. Oleniuk
Osler, Hoskin & Harcourt LLP
Suite 2500, 450 – 1st Street SW
Calgary, AB T2P 5H1
Email regulatory@transmountain.com

3.6 What is an intervenor?

Being an intervenor is the most involved way to participate in the hearing, if you are not a Landowner or Affected Person granted a detailed route hearing. It requires a time commitment and may involve some costs to prepare your evidence and send documents to the Parties. It allows you, among other things, to:

- submit written evidence;
- ask oral questions about others' evidence (if you have filed a notice of motion requesting permission to do so and the Board has granted such permission);
- submit and respond to motions; and
- make final argument.

If you submit evidence, you must be prepared to answer any questions asked about your evidence, and attend the oral portion of the hearing. The Board, Trans Mountain, and the applicable Landowner or Affected Person can ask you questions about your evidence.

As an intervenor, if you wish to orally cross-examine Trans Mountain, the applicable Landowner or Affected Person, or another intervenor, you must file a notice of motion explaining who you wish to cross-examine and how your cross-examination of the requested Party will assist the Board in making its decision.

Intervenors will be notified of, or receive, all documents that are on the public registry. This includes the Proposed Route application, evidence, notices of motion, and all related materials. You can find the public registry on the Board's website. For more information on how to find documents on the website, see Appendix 4.

3.7 Can I withdraw?

If you are approved to be a Participant, you may withdraw at any time by notifying the Board in writing.

Should a Landowner or Affected Person withdraw their objection, the detailed route hearing scheduled for that Landowner or Affected Person will not be held. Therefore, a commenter's or intervenor's participation in that specific hearing would end.

4 Steps in the process for each detailed route hearing

This section describes the steps in the hearing process for each detailed route hearing granted for Segment 5. Appendix 7 shows the timetable of events and associated deadlines.

4.1 The Board releases the Hearing Order, including the List of Issues

The issues that the Board will consider in each of the detailed route hearings granted under this Hearing Order are limited to those listed in Appendix 8.

4.2 Trans Mountain serves the Hearing Order

As noted in Section 2.6, Trans Mountain must serve a copy of the Board's 23 January 2018 Letter of Decision and this Hearing Order (including its appendices and cover letter) on all persons listed in Appendix 2, and provide those same documents to Aboriginal groups, as noted in Section 2.7. Trans Mountain must also publish the Notice for Segment 5 in local newspapers.

4.3 The Board receives Applications to Participate

Refer to Section 3 for how to apply to participate in a detailed route hearing for Segment 5.

Applications to Participate must be filed with the Board and served on Trans Mountain, and the Landowner or Affected Person, by **11:00 Pacific Time (noon Mountain Time) on 23 February 2018**.

4.4 The Board issues the List of Participants

The Board will release the List of Participants for each hearing soon after the deadline for filing of Applications to Participate, and **no later than 2 March 2018**. The List of Participants, which includes the Landowner or Affected Person, Trans Mountain, intervenors, and commenters, will also include information about how each Participant wishes to be served with documents.

If you are a Participant, you must notify the Board if your contact information changes. Sign into the Participation Portal using your online NEB Account, locate the relevant hearing, and select "Manage Contacts." You can also notify the Board of such changes by filing a letter.

4.5 Trans Mountain serves the Proposed Route application

Immediately after the Board releases the List of Participants, Trans Mountain must serve a copy of the Proposed Route application and all related documents on all Parties. Parties should only receive the Proposed Route application and related documents that are relevant to the specific hearing in which they are participating.

4.6 Trans Mountain files additional written evidence

By 11:00 am Pacific Time (noon Mountain Time) on 6 March 2018, Trans Mountain must file any additional written evidence to supplement its Proposed Route application. It must also serve a copy on all Parties in each detailed route hearing. Additional written evidence should include the following:

- A detailed map(s) – with title, date, number, and legend – showing the lands to which each statement of opposition in Segment 5 applies. Map(s) must be in a form acceptable to the Board, using a photomosaic base at a minimum scale of 1:5000, and denoting the approved general TMEP corridor boundaries. On any map, Trans Mountain must ensure that:
 - legal land descriptions are included, and that the location of each tract of land in relation to the proposed TMEP route is clearly shown;
 - all tract numbers labelled are confirmed to be correct and correspond to the appropriate property in the associated statement of opposition;
 - property boundaries of the lands subject to the detailed route hearing are clearly indicated and differentiated from surrounding properties;
 - the physical and environmental features that influenced the Proposed Route are identified;
 - any features are identified that landowners have mentioned in their opposition or have raised in discussions with Trans Mountain (e.g., waterways, shelter belts, planned developments, prescribed areas); and
 - any features are identified that relate to the local Aboriginal peoples, if relevant to that particular detailed route hearing, and if appropriate (e.g., reserves, sites of significance whose locations are able to be shared generally).
- Trans Mountain's rationale for the Proposed Route.

- A detailed response to the concerns raised by the Landowner or Affected Person within their statement of opposition.

4.7 Landowners, Affected Persons, and intervenors file written evidence

By 11:00 am Pacific Time (noon Mountain Time) on 27 March 2018, Landowners, Affected Persons, and intervenors who want to file written evidence must file it with the Board and serve a copy on all Parties.

Evidence must be relevant to one or more of the issues identified in Appendix 8. The evidence should provide comments in relation to Trans Mountain's evidence and provide any additional information with respect to the statement of opposition, including details of alternate routing and the methods and/or timing of construction.

Alternate routes, if suggested, should be drawn on the maps provided by Trans Mountain and appended to the written evidence. Evidence can include reports, maps, drawings, photographs, videos, etc.

4.8 Trans Mountain files reply evidence

By 11:00 am Pacific Time (noon Mountain Time) on 10 April 2018, Trans Mountain must file reply evidence, if any, and serve a copy on the Parties in each detailed route hearing.

4.9 The oral portion of the hearings begin

The Board will confirm the start date, times, and venues of the oral portion of the hearings in a procedural update to be issued and sent to all Parties at a later date.

There will be two locations available for the Segment 5 detailed route hearings: Merritt and Kamloops, BC. The Board anticipates that the oral portion of the detailed route hearings will begin in **late April/early May 2018**.

The purpose of the oral portion of a detailed route hearing is to test the evidence filed by the Parties by asking oral questions and providing final argument.

The general procedure for the oral portion of each hearing will be as follows:

- 1) Each statement of opposition that was granted a detailed route hearing will be heard separately.
- 2) The order in which each detailed route hearing will be heard will be determined and communicated by the Board in a procedural update closer to the start of the hearing.
- 3) At the start of each hearing, the Board will request that the Landowner or Affected Person, and any intervenors participating in the hearing, come forward and identify themselves and indicate if they have any preliminary matters (known as the registration of appearances).

- 4) Trans Mountain's witnesses will provide an overview (a brief opening statement) of the Proposed Route, the criteria used in determining the Proposed Route, and the opposed portion of the Proposed Route. Trans Mountain may present maps depicting both the Proposed Route and any alternate routes proposed by the Landowner or Affected Person, and intervenors.
- 5) The Landowner or Affected Person and the Board may then verbally question (cross-examine) Trans Mountain's witnesses on the evidence filed. Intervenors who wish to cross-examine Trans Mountain must file a notice of motion with the Board (see Section 5.5).
- 6) The Landowner or Affected Person may present a summary (a brief opening statement) of their objections and views on the Proposed Route, their potential alternate route(s), and the criteria that were used in determining the potential alternate route.
- 7) Trans Mountain and the Board may then verbally question (cross-examine) the Landowner or Affected Person on the information they have filed. Intervenors who wish to cross-examine the Landowner or Affected Person must file a notice of motion with the Board (see Section 5.5).
- 8) Intervenors may present a summary of their objections and views (a brief opening statement) on the Proposed Route, their potential alternate route(s), and the criteria that were used in determining the potential alternate route.
- 9) Trans Mountain, the Landowner or Affected Person, and the Board may then verbally question (cross-examine) the intervenors on the information they have filed.
- 10) Trans Mountain may then give a summary statement of its position (final argument). **New evidence must not be presented in final argument.**
- 11) The Landowner or Affected Person and intervenors may then give a summary statement of their positions (final argument) in regard to the opposed Proposed Route, and the decision or order which they are requesting of the Board. **New evidence must not be presented in final argument.**
- 12) Trans Mountain will then be given the opportunity to reply to the arguments of the Landowner or Affected Person and intervenors. **New evidence must not be presented in reply argument.**

This general procedure may be varied by the Board as it considers appropriate.

A Process Advisor will be available in the hearing room before the start of each oral hearing to explain the layout of the room and answer any process questions.

4.10 The Board closes the record and makes decisions

After the oral portion of each detailed route hearing, the Board will close the record for that hearing, meaning that it will not accept any new evidence. The Board would then consider all relevant evidence on the record before making a decision on that hearing.

4.11 Costs and available funding

Following the conclusion of each detailed route hearing, those persons who made representations to the Board at the public hearing, in accordance with section 53 of the *National Energy Board Rules of Practice and Procedure, 1995* (the Rules), may seek reimbursement of costs from Trans Mountain. Along with your claim, you must provide receipts showing:

- the amount of the actual costs;
- to whom they are owed; and
- the reasons those costs were incurred.

This information must be sent by registered mail to the Board and Trans Mountain.

If you and Trans Mountain do not agree on the amount of the costs that you claim, you can ask the Board to determine the amount. For more information or for assistance, please contact a Process Advisor.

You are also able to apply for advanced costs. A separate Board Member (in accordance with section 14 of the NEB Act) has been authorized to make decisions regarding the process and eligibility for individuals and groups to request advance costs. This Board Member will provide additional information on the criteria and eligibility and how to apply for advance costs at a later time. The Board must be clear that any costs advanced will not be in addition to the reasonable costs payable at the end of the detailed route hearings that Trans Mountain is obligated to pay in accordance with the Rules.

4.12 Alternative Dispute Resolution

Landowners or Affected Persons, and Trans Mountain, are encouraged to use the Board's Alternative Dispute Resolution (ADR) services. An ADR process is uniquely tailored to individual needs and could take the form of a meeting between the Landowner or Affected Person, and Trans Mountain. To take advantage of ADR, both the Landowner or Affected Person, and Trans Mountain, must agree to take part. This process is voluntary and facilitated by trained Board staff, or by another neutral third party. The facilitator will assist those participating in ADR to develop a process that may help resolve issues related to the statement of opposition.

If you are interested in using the Board's ADR services, a session can be scheduled at a location and time agreeable to the Landowner or Affected Person, and Trans Mountain. For more information about ADR options, please email ADR-MRD@neb-one.gc.ca or call 1-800-899-1265.

5 Procedures

This section describes how to submit documents, the typical deadline for submitting documents, and other important procedures.

5.1 How do I prepare documents?

Every document you file with the Board or serve on others must refer to the unique hearing number (MH-001-2018 to MH-016-2018) and file number OF-Fac-Oil-T260-2013-03 17 (if you are filing a letter of comment, see Section 3.5.1).

Address the document(s) to the appropriate Party. Anything filed with the Board must be addressed to the Secretary of the Board. Documents specifically for others should be addressed to them using the information found in the List of Participants as a guide.

Number the pages of your document consecutively, including blank pages, so the electronic page numbers match the page numbers that show on your document. If possible, please use an updated version of Adobe Acrobat (PDF).

Except for online forms, sign any document you file with us.

If you wish to include information taken from a website in your filing:

- include PDF copies of the exact information that you want the Board to consider (you cannot simply state “see article ‘X’ found at this website link”);
- insert a direct link or a reference to the website;
- ensure that the noted website does not require a password or subscription; and
- file with the Board a hard copy of all the information from the website you are including in your evidence.

5.2 How do I file documents with the Board?

All documents filed with the Board become part of the record of the detailed route hearing and are available on the Board’s website.

The Board requires you to file your documents through the Participation Portal or by using e-file.

Filing documents using the Participation Portal

To file your documents online through the Participation Portal using your NEB Account, you must follow these steps:

- i) Prepare your documents as explained in Section 5.1.
- ii) Sign into your NEB Account using your GCKey user ID and password, which you created when you applied to participate.
- iii) You should see the Welcome Portal page; click “continue.”
- iv) On the list of the hearings, locate the one in which you are a Participant, click on “Submit Documents Electronically,” and follow the instructions.

- v) Under Step 8 – “Service Options and Submission of Complete Form,” you may choose to have the Participation Portal send an Automated Service Notification on your behalf by email to all Parties who have provided a valid email address. To make use of this service, click on “Yes, I want to use the Participation Portal’s Automated Service Notification option for all Participants who have provided an email address.”

Note: The Board will accept this Automated Service Notification as equivalent to the service required under the Rules. If you do not wish to use the Automated Service Notification option, you are required to serve all Parties yourself using any of the methods allowed under section 8 of the Rules. **The Participation Portal cannot serve Parties who have not provided an email address. It is your responsibility to serve a hard copy of all the documents you file on any Party who has not provided an email address.**

Once you have completed your filing through the Participation Portal, you will receive two emails:

- your filing receipt where you need to verify your attachments; and
- important instructions for providing a hard copy to the Board, as well as contact information for Parties that have not provided an email address and for whom you must serve a hard copy of your documents.

Filing documents using the e-filing tool

To e-file your documents, prepare the documents as explained in Section 5.1, then:

- Go to the Board’s website, www.neb-one.gc.ca. Under “Applications & Filings,” click on “Submit Applications and Regulatory Documents,” then on “File Hearing Documents,” and on “e-file.” Then, follow the instructions. Refer to the *Filers Guide to Electronic Submission* on the Board’s website for more information. You will receive an email containing a filing receipt. Print the filing receipt and sign it. Send one hard copy of the e-filed document(s) and one hard copy of the signed filing receipt to the Board by mail, hand delivery, or courier. See Section 6 for the Board’s contact information.
- You are required to serve all Parties yourself using any of the methods allowed under section 8 of the Rules.

Please note that the Board **cannot** accept documents by email.

5.2.1 What if I cannot file my documents through the Participation Portal or e-file?

If you cannot file your documents with the Board through the Participation Portal or e-file, you may file documents by hand delivery, mail, fax, or courier.

- Prepare the document as explained in Section 5.1. Hand deliver, mail, fax, or courier one copy of each document to the Board. See Section 6 for the Board’s contact information.

- You are required to serve all Parties yourself using any of the methods allowed under section 8 of the Rules.

5.2.2 Filing documents during the oral portion of the hearing

If you wish to file a document after the oral portion of the hearing has started and the Board has granted permission for it to be filed, you must:

- follow the instructions above for filing documents using the method of your choice;
- **give six hard copies of your document(s) to the Regulatory Officer;** and
- make enough hard copies available to those in the hearing room who may need it (this could include Trans Mountain, a witness panel, or other intervenors who may be attending).

5.2.3 Who can help me with filing my documents?

Contact a Process Advisor (see Section 6.3).

5.3 How do I serve documents on others?

When you are required to serve documents, you must send one copy to each of the following:

- Trans Mountain;
- Trans Mountain's legal counsel;
- the Landowner or Affected Person; and
- each intervenor on the List of Participants for the specific detailed route hearing you are participating in.

The preferred method of service and contact information for each Landowner or Affected Person, and intervenor, will be indicated on the List of Participants (e.g., their email address, their mailing address, etc.).

Trans Mountain, Landowners or Affected Persons, and intervenors who can access documents on the Board's website must be notified by email when you file a document. To do this, create a list of email addresses from the List of Participants and send an email to this list indicating that your filing is available on the Board's website.

If the List of Participants indicates a Landowner or Affected Person, or an intervenor, is unable to access electronic documents, you must provide that person with a hard copy (See Section 5.2). If your document cannot be scanned – for example, if it is too large – you must mail, fax, courier, or hand deliver one copy to the Board, and serve all Parties following section 8 of the Rules. Board staff will put an electronic placeholder on the public registry. A placeholder indicates that a document has been filed in hard copy (and is available at the Board's library), but cannot be viewed or searched online.

You can contact a Process Advisor for assistance with filing your documents, or if you have questions about serving documents.

5.4 What if I cannot meet a deadline?

The Board's deadlines are set to provide fairness, efficiency, and certainty to all Participants. The Board encourages Participants to file documents electronically using the Participation Portal or e-file, or to use fax or courier, so others receive documents on time.

When you must file documents by a certain deadline, the intended recipient, the Board and the Parties to the detailed route hearing, must receive the documents **by 11:00 am Pacific Time (noon Mountain Time)**, on the deadline date, unless otherwise indicated.

Late filings will not be accepted, except with the Board's permission. If you cannot meet a deadline, you must write to the Board to request an extension and provide information about why you cannot meet the deadline and what value your filing brings to the matter before the Board. This type of filing is called a notice of motion (See Section 5.5). This must also be served on all the Parties to the detailed route hearing. The Board will then decide whether to grant your request by considering:

- the reason why you cannot meet the deadline;
- whether your filing is likely to assist the Board;
- whether other Participants have made, or could have made, similar submissions;
- whether other Participants could be disadvantaged as a result of the late filing; and
- any other relevant considerations.

5.5 What is a notice of motion and how do I raise a question of procedure or substance that requires a Board decision?

If you want to ask the Board to do something, such as to consider a change to the process or to accept a late filing (as described in Section 5.4), you must file a request. This is called a notice of motion. A notice of motion must include:

- a concise statement of the facts;
- the grounds for the request;
- the decision or order requested; and
- any information which supports the motion.

A notice of motion must:

- be filed as a separate, individual document that only deals with the motion;
- be in writing;
- be signed by the person making the motion or an authorized representative;
- be divided into consecutively numbered paragraphs; and
- be filed with the Board, and served on all Parties.

If you are relying on case law or other authorities to support your position, you must prepare and file a book of authorities and highlight the specific passages you are relying on.

If you would like to make a motion during the oral portion of the hearing, you should include the same information as a written notice of motion.

For further information on notices of motion, see section 35 of the Rules, which can be found on the Board's website (see Appendix 4).

5.6 Will you keep my evidence confidential?

All evidence the Board accepts for this hearing will be on the public registry unless you file a notice of motion to keep your evidence confidential under sections 16.1 or 16.2 of the NEB Act, and the Board accepts your request for confidentiality. Contact a Process Advisor for important information on making such a request.

5.7 Can I use an interpreter at the oral hearing?

In a Party's Application to Participate, it must tell the Board which official language it wants to use during the oral portion of the detailed route hearing. If the Parties in a particular hearing indicate both English and French, the Board will provide simultaneous interpretation at the oral hearing.

If you intend to speak in a language other than English or French, you must provide your own interpreter and incur those costs. Only the English translation will be included in the hearing transcript. It is up to the presenting Landowner, Affected Person, or intervenor to confirm the accuracy of the translation.

5.8 Where can I go for further information about hearing procedures?

The Rules provide information about the Board's hearing process. However, in the event of a discrepancy between the Rules and this Hearing Order, this Hearing Order prevails. The Board may vary the hearing process set out in this Hearing Order, as needed. You may also contact a Process Advisor for any questions (see Section 6.3).

6 Contact information

6.1 The Board's contact information for filing documents

Secretary of the Board
National Energy Board
Suite 210, 517 Tenth Avenue SW
Calgary, AB T2R 0A8

Telephone 403-292-4800
Toll-free telephone 1-800-899-1265
Facsimile 403-292-5503
Toll-free facsimile 1-877-288-8803

6.2 NEB website

The Board posts the most current information about the detailed route hearings on its website. Go to www.neb-one.gc.ca and click on "Trans Mountain Expansion" under "Quick Links," then on the "Detailed Route Approval Process" tab. See Appendix 4 for more information on the Board's website.

6.3 Process Advisor Team

The Board's Process Advisor Team can help you understand the hearing process and how you can participate. Appendix 5 provides some information on what a Process Advisor can do to assist you. You can contact a Process Advisor at:

Email TMX.ProcessHelp@neb-one.gc.ca
Toll-free telephone 1-800-899-1265
Toll-free facsimile 1-877-288-8803

6.4 Regulatory Officer

If you need help with filing evidence or exhibits during the hearing, please contact the Regulatory Officer at:

Email TMX.RegulatoryOfficer@neb-one.gc.ca
Toll-free telephone 1-800-899-1265
Facsimile 403-292-5503
Toll-free facsimile 1-877-288-8803

6.5 Publications and transcripts

The Board's Hearing Process Handbook provides general information about how hearings are conducted.

For other Board publications, you may also contact the Board's library:

Email publications@neb-one.gc.ca
Telephone 403-292-3562 or 1-800-899-1265 (toll-free)
Second Floor, 517 Tenth Avenue SW
Calgary, AB T2R 0A8

6.5.1 Transcripts

The oral portion of each detailed route hearing will be recorded and transcribed daily. Transcripts will be available through the Board's website at www.neb-one.gc.ca. Click on "View Regulatory Documents" on the left side of the webpage. Then click on "Active Hearings," and on "Trans Mountain Pipeline ULC -- Detailed Route Hearings for Segment 5."

You can also order transcripts directly from International Reporting Inc. either at the hearing, by e-mailing bprouse@irri.net or by calling 613-748-6043. All charges related to transcripts will be charged directly to those persons requesting them, based on incremental reproduction costs and delivery of the transcripts.

6.6 The Board's library

You can view a copy of the Proposed Route application in the Board's library. The library is also an excellent source of information about energy issues. You can reach the library at:

Email library@neb-one.gc.ca
Telephone 403-299-3561 or 1-800-899-1265 (toll free)
Second Floor, 517 Tenth Avenue SW
Calgary, AB T2R 0A8

NATIONAL ENERGY BOARD

Original signed by L. George for

Sheri Young
Secretary of the Board

Appendix 1 Explanation of frequently used terms

Affected Person	A person who anticipated their lands may be adversely affected by the detailed route, who filed a statement of opposition pursuant to subsection 34(4) of the NEB Act, and was granted a detailed route hearing pursuant to subsection 35(1) of the NEB Act.
Application to Participate	A form used by the Board to assess whether to grant someone permission to participate in a hearing as an intervenor or commenter. The form must describe how a person's participation will assist the Board in making its decision. For Landowners or Affected Persons, this form is only used for registration purposes; participation is guaranteed (see Section 3).
Board or NEB	National Energy Board
Certificate	Certificate of Public Convenience and Necessity granted under section 52 of the <i>National Energy Board Act</i> and, in this case, referring to Certificate OC-064 approving the Trans Mountain Expansion Project.
commenter	A person who has been granted commenter status by the Board and who may share their views in a written letter of comment (see Section 3.5).
detailed route	The specific route that the pipeline will follow within the general pipeline corridor approved by the Certificate. For this Hearing Order in relation to the detailed route, see Section 2.2 for maps.
e-file	Filing documents electronically with the Board through the electronic document submission tool (see Section 5.2).
evidence	Reports, statements, photographs, and other material or information that Participants file as part of the record. Evidence is used to support their position.
file	A formal way of delivering documents to the Board (see Section 5.2).
final argument	The positions put forward by the Parties in relation to the decision the Board should make, and the reasons why the evidence supports those positions. New evidence must not be presented in final argument.
Governor in Council (GIC)	The Governor General acting on the advice of the Federal Cabinet.
Hearing Order	The Hearing Order for the detailed route hearings with hearing numbers starting at MH-001-2018 and ending at MH-016-2018.

hearing or public hearing	A public process used by the Board to gather and test evidence to enable it to make fair and transparent decisions. A hearing includes a written portion and may include an oral portion.
intervenor	A person who has been granted intervenor status by the Board. Being an intervenor is the fullest way to participate in the hearing process, if you are not a Landowner or Affected Person granted a detailed route hearing.
Landowner	An owner of lands with an interest in the detailed route, who filed a statement of opposition pursuant to subsection 34(3) of the NEB Act, and who was granted a detailed route hearing pursuant to subsection 35(1) of the NEB Act.
List of Issues	The issues that the Board will consider in this hearing (see Appendix 8).
List of Participants	The List of Participants includes Trans Mountain and also identifies those that the Board has determined can participate in the hearing, based on the filed Applications to Participate.
NEB Act	<i>National Energy Board Act</i> , R.S.C., 1985, c. N-7 as amended
notice of motion	A filed document used to raise a question of process or substance, or to ask the Board to do something (see Section 5.5). Notices of motion can also be made orally during an in-person hearing.
oral portion of the hearing	The in-person portion of the hearing, which in this case involves cross-examination and final argument (see Section 4).
order	A Board order made under the NEB Act.
Participant	A person who has applied to participate in the hearing and whose Application to Participate has been approved. The term Participants includes Trans Mountain, Landowners and Affected Persons, intervenors, and commenters.
Participation Portal	An online tool used for applying to participate and filing documents during the hearing process. Using the Participation Portal throughout the hearing will assist in efficiently filing evidence and receiving information.
Party	The Parties include Trans Mountain, Landowners, Affected Persons, and intervenors (but not commenters).
Process Advisor	Board staff that help the public, Aboriginal groups, and Participants understand the hearing process and how to participate in it (see Section 6.3 and Appendix 5).

PPBoR	The Plan, Profile, and Book of Reference. A “plan and profile” is a detailed drawing of the pipeline as seen from above (aerial view) and from the side (profile view), showing the exact proposed location of the pipeline. The “book of reference” identifies the lands, provides the names of the landowners and land occupants, and shows the dimensions (length, width, and total area) of the right-of-way required for the pipeline.
Proposed Route	The detailed route for the pipeline as proposed by Trans Mountain in the PPBoR.
Proposed Route application	The PPBoR and other documents filed by Trans Mountain related to the Proposed Route.
public registry	An online document repository for all documents in the hearing, including the evidence filed and hearing transcripts. It is the record that is available to the public. In most cases, the public registry and the record include the same information. However, in exceptional circumstances, the Board may decide that certain information can be filed confidentially. This information is part of the record, but not available on the public registry.
record	The record is what the Board considers in making its decisions. It includes all relevant filings, evidence, and submissions filed or given orally in the hearing, including documents such as the Proposed Route application and the Hearing Order.
Regulatory Officer	Board staff that assist Participants; manage documentation before, during, and after the hearing; perform court clerk duties at the hearing; and manage the post-hearing process (see Section 6.4).
reply evidence	Additional information that Trans Mountain may file in reply to evidence filed by other Parties.
Rules	<i>National Energy Board Rules of Practice and Procedure, 1995</i>
segment	A portion of the detailed route as defined in the PPBoR. Trans Mountain grouped the PPBoR into 7 segments, 4 of which are divided into 25 sub-segments, making 28 segments in total.
serve	Officially providing a document to the applicable Participant, such as Trans Mountain. Notice that the document is available on the public registry is usually provided electronically (by e-mail), but the document may also need to be provided to the applicable Participant by mail, fax, courier, or hand delivery (see Section 5.3).
Trans Mountain	Trans Mountain Pipeline ULC, the company which has filed the Proposed Route application.

Trans Mountain Expansion Project (or TMEP)	The approved pipeline from Alberta to British Columbia that would twin the existing and operational Trans Mountain Pipeline. The TMEP was approved under Certificate OC-064.
Trans Mountain Pipeline	The existing and operational Trans Mountain Pipeline from Alberta to British Columbia.

Appendix 2 List of Landowners and Affected Persons who met the requirements of the NEB Act

Note that each of those listed below is granted an individual detailed route hearing¹

First name(s)	Last name(s)	Seg. of Affected Person	Landowner	Address	PPB/R sheer number(s)	Tract number(s)	Reg Docs number	Individual Hearing number
Diane and Grant	Hoffman	5	Landowner	PO Box 118 Knutsford, BC V0E 2A0	M002-PM03011-018	1643	A84016	MH-001-2018
Nestlé Canada Inc.		5	Landowner	c/o Bruce Lauerman 66700 Othello Rd. Hope, BC V0X 1L1 Gordon Nettleton McCarthy Tétrault LLP 4000, 421 7 th Ave. SW Calgary, AB T2P 4K9	M002-PM03011-078	1964	A84157	MH-002-2018
1054408 BC Ltd.		5	Landowner	c/o Mark Steele 8387 Young Rd. Chilliwack, BC V2P 4N8	M002-PM03013-002	2008	A84015	MH-003-2018
Eleonora	Anderson	5	Landowner	59850 Hunter Creek Rd. Hope, BC V0X 1A0 Mr. Bruce Davies Waterstone Law Group 201 – 45793 Luckakuck Way Chilliwack, BC V2R 5S3	M002-PM03013-009	2086	A83890	MH-004-2018
Compulogic Systems Inc. (Black Diamond Ranch)		5	Landowner	c/o Gerald Gelderman 333 Gillis Rd. Kingsvale, BC V1K 1B8	M002-PM03011-046	PC: 7117.04	A83823	MH-005-2018

¹ Where a particular listing contains a group of names, only one detailed route hearing has been granted (e.g., Diane and Grant Hoffman).

MH-001-2018 to MH-016-2018

First name(s)	Last name(s)	Seg.	Landowner or Affected Person	Address	PPBoR sheet number(s)	Tract number(s)	RegDocs number	Individual Hearing number
89 Cattle Co. Ltd.		5	Landowner	c/o Sheila Chalmers and Christian Mundhenk 7681 Westsyde Rd. Kamloops, BC V2B 8S1	M002-PM03011-002	1375 1377 1379	<u>A82466</u>	MH-006-2018
Pembina Pipeline Corporation		5	Landowner	c/o John Stevenson 4000, 585 – 8 th Ave. SW Calgary, AB T2P 1G1	M002-PM03011-012	1608 ADJ: 257	<u>A83861</u>	MH-007-2018
Sugarloaf Ranches Ltd.		5	Landowner	c/o Chris Wild 124 Seymour St. Kamloops, BC V2C 2E1 Sandor Sajinovics KGHM International Ltd. Suite 500, 200 Burrard St. Vancouver, BC V6C 3L6	M002-PM03011-013 M002-PM03011-014 M002-PM03011-015	1611 1612 PC: 7119 PC: 7120 PC: 7121 PC: 7124 PC: 7125 PC: 7126 PC: 7128 PC: 7129	<u>A83627</u>	MH-008-2018
KGHM Ajax Mining Inc.		5	Landowner	c/o Chris Wild 124 Seymour St. Kamloops, BC V2C 2E1 Sandor Sajinovics KGHM International Ltd. Suite 500, 200 Burrard St. Vancouver, BC V6C 3L6	M002-PM03011-013 M002-PM03011-014 M002-PM03011-015 M002-PM03011-016	1613 1614 1629 1630 1632 PC: 7122 PC: 7123 PC: 7130	<u>A83626</u>	MH-009-2018
Westcoast Energy Inc.		5	Landowner	c/o Robert Bourne Suite 200, 425 – 1 st St. SW Calgary, AB T2P 3L8	M002-PM03011-044 M002-PM03011-077 M002-PM03011-078 M002-PM03013-005	1762 1961 1962 2042	<u>A83008</u>	MH-010-2018

MH-001-2018 to MH-016-2018

First name(s)	Last name(s)	Seg	Landowner or Affected Person	Address	PPBoR sheet number(s)	Tract number(s)	Reg Docs number	Individual Hearing number
Noela Douglas	Champagne Bain	5	Landowner	8793 Westsyde Rd. Kamloops, BC V2B 8S4	M002-PM03009-002	ADJ: 286.11	<u>A82987</u>	MH-011-2018
Ildeberto Jose and Shelley Ann Kathrine	Demelo	5	Landowner	8845 Westsyde Rd. Kamloops, BC V2B 8P6	M002-PM03009-001	ADJ: 286.14	<u>A82728</u>	MH-012-2018
Coldwater Indian Band		5	Aboriginal group	c/o Chief Lee Spahan 2249 Quilchena Ave. PO Box 4600 Stn Main Merritt, BC V1K 1B8 Emma Hume Ratcliff & Company LLP 500 – 221 West Esplanade North Vancouver, BC V7M 3J3	n/a	n/a	<u>A82510</u>	MH-013-2018
Stk'emlupsemc te Secwepemc of the Secwepemc Nation		5	Aboriginal group	Sarah Hansen Miller Thompson LLP Suite 1000, 840 Howe St. Vancouver, BC V6Z 2M1	n/a	n/a	<u>A82838</u>	MH-014-2018
Julian	Kimoff	5	Landowner	5680 Lochside Dr. Victoria, BC V8Y 3H7	M002-PM03011-045	1764.02	<u>A83878</u>	MH-015-2018
Rosanne	Kimoff	5	Landowner	6656 Welch Rd. Saanichton, BC V8M 1W6	M002-PM03011-045	1764.02	<u>A83880</u>	MH-016-2018

MH-001-2018 to MH-016-2018

Appendix 3 Where can I see Trans Mountain's PPBoR and related documents?

Copies of Trans Mountain's PPBoR and related documents are available for viewing at the Board's library:

Second floor, 517 Tenth Avenue SW
Calgary, AB T2R 0A8

The libraries and municipal offices listed below also have copies of the PPBoR for Segment 5:

- City of Kamloops
- City of Merritt
- Thompson-Nicola Regional District
- District of Barriere
- District of Hope

Appendix 4 How can I find and file documents on the Board's website?

Website navigation tips:

- 1) You will find the Board's website home page at: www.neb-one.gc.ca.
- 2) To find the public registry for the Detailed Route application, on the left side of the home page, click on "View Regulatory Documents." Then click on "Active Hearings," and on "Trans Mountain Pipeline ULC – Detailed Route Hearings for Segment 5."

At times, recently filed documents may not appear in the Segment 5 folder as they are waiting to be distributed by Board staff. You will find these documents in the "Inbox." After clicking on "View Regulatory Documents" (as described above), click on "Recent Filings / Inbox."

- 3) If you are a Landowner, Affected Person, an intervenor, or a commenter and you use the Participation Portal to file documents, that system will keep a record of those documents.
- 4) To learn about hearings in general, go to the left side of the home page and click "Participate in a Hearing."
- 5) For information on how to e-file documents, go to the left side of the home page, click on "Submit Applications and Regulatory Documents." On the right side of the next screen, click on "Filers Guide to Electronic Submission."
- 6) To find Acts, Regulations, and the Rules, click on "Acts and Regulations" near the top of the home page, and then on "List of Acts and Regulations." The Acts under which the Board has mandate, responsibilities, and powers are listed, including the NEB Act. The Rules can be found by clicking on "Regulations" to the right of "National Energy Board Act."

If you would like to receive periodic email updates on the hearing, go to www.neb-one.gc.ca/transmountainexpansion. Click on "sign up" on the right hand side under the "Receive detailed route process updates" heading.

If you are unable to access the Participation Portal, contact a Process Advisor.

Appendix 5 Role of the Process Advisor Team

The Board has assigned a Process Advisor Team for the TMEP detailed route hearings. A Process Advisor's role is to support Participants in the detailed route hearings (i.e., Landowners or Affected Persons, intervenors, commenters, and Aboriginal groups), and to provide information to the general public.

If you are thinking about participating in a detailed route hearing, a Process Advisor can provide you with assistance.

A Process Advisor can:

- 1) answer your questions about the Board's hearing process;
- 2) explain the different ways that you may participate (intervenor or commenter) and what you can and cannot do in these roles;
- 3) explain how you can apply to participate in the process;
- 4) provide samples and templates and answer your questions about them;
- 5) explain your role in the hearing;
- 6) answer your process questions in person during an oral portion of a hearing; and
- 7) answer your questions about reimbursement of reasonable costs incurred during the hearing.

A Process Advisor cannot:

- 1) make your case for you; meaning he/she cannot:
 - a) interpret the evidence for you;
 - b) tell you what information you should file or present orally to the Board;
 - c) tell you how to best present your information; or
 - d) write your questions, evidence, or argument;
- 2) talk to the assigned Panel of Board members on your behalf; or
- 3) talk to Trans Mountain on your behalf.

If you have questions about the detailed route hearing process, or participating in it, please contact a Process Advisor by calling 1-800-899-1265 (toll-free) or emailing TMX.ProcessHelp@neb-one.gc.ca

Process Advisors will generally be available during usual business hours and will be able to respond to enquiries the following business day.

Appendix 6 Notice of Detailed Route Hearings

**National Energy Board
Notice of Detailed Route Hearings
MH-001-2018 to MH-016-2018
Trans Mountain Pipeline ULC
Trans Mountain Pipeline Expansion Project
Certificate OC-064
Detailed route hearings for Segment 5**

The National Energy Board (Board) will hold detailed route hearings in response to written statements of opposition concerning portions of Segment 5 of the proposed detailed route of the Trans Mountain Expansion Project (TMEP). The hearings for the statements of opposition identified in this notice are anticipated to begin in late April/early May 2018, in Merritt and Kamloops, British Columbia. Additional information about the schedule, exact locations, and timing will be announced at a later time.

All documents related to the application for the detailed route are available for viewing at the Board's website at www.neb-one.gc.ca (click on "Trans Mountain Expansion" under "Quick Links" on the left side), and at the following locations:

- City of Kamloops
- City of Merritt
- Thompson-Nicola Regional District
- District of Barriere
- District of Hope

The Board will not reconsider matters that were addressed in the certificate hearing, such as the need for the TMEP. The Board will hear matters related to the best possible detailed route of the pipeline and the most appropriate methods and timing of constructing the pipeline, in relation to the following legal descriptions:

[Add relevant legal descriptions]

[Add maps as described in Section 2.6 of the Hearing Order]

The Board's hearing process in relation to Trans Mountain Pipeline ULC's application for approval of its detailed route is the only process that will deal with the determination of the detailed route. The Board will make the final decision in determining the best possible detailed route of the pipeline and the most appropriate methods and timing of constructing the pipeline.

Landowners and Affected Persons, and others who have not been granted a detailed route hearing, may apply to participate in any detailed route hearing for Segment 5 and should consult the Board's Hearing Order.

Applications to Participate as an intervenor or commenter must be completed and filed through the Board's Participation Portal (found on the Board's website) **no later than 11:00 am Pacific Time (noon Mountain Time) on 23 February 2018.**

Your Application to Participate must clearly explain how your participation will assist the Board in making its decision, and be complete in order for the Board to make its determination on your application. Failing to provide the requested information may result in an unsuccessful application. Additional information on applying to participate is available in Section 3 of the Board's Hearing Order.

The Hearing Order also provides information about costs and available funding.

For a copy of the Hearing Order or for further information, please contact a Process Advisor by calling 1-800-899-1265 (toll-free) or emailing TMX.ProcessHelp@neb-one.gc.ca, or view the Board's TMEP webpage at www.neb-one.gc.ca/transmountainexpansion.

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National Energy Board
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Appendix 7 Timetable of events

Event	Hearing Order Reference	Person responsible	Date or deadline (11:00 am Pacific time / noon Mountain time) unless otherwise indicated
PPBoR filed for Segment 5	n/a	Trans Mountain	10 March 2017
Hearing Order released for Segment 5	n/a	Board	23 January 2018
Update Trans Mountain's website with the Board's 23 January 2018 Letter of Decision and Hearing Order (including its appendices and cover letter)	2.6	Trans Mountain	29 January 2018 [3:00 pm Pacific Time [4:00 pm Mountain Time]]
Serve Hearing Order on Appendix 2, and provide notification to Aboriginal groups	2.6 and 2.7	Trans Mountain	2 February 2018 [3:00 pm Pacific Time (4:00 pm Mountain Time)]
Publish Notice of Detailed Route Hearings	2.6	Trans Mountain	6 February 2018
File confirmation of service to Appendix 2 and notification of Aboriginal groups	2.6 and 2.7	Trans Mountain	12 February 2018
File confirmation of Notice of Detailed Route Hearings publication	2.6	Trans Mountain	12 February 2018
File Application to Participate, and serve Trans Mountain and any applicable Landowners or Affected Persons	4.3	Landowners, Affected Persons, and interested persons	23 February 2018
Release List of Participants	4.4	Board	no later than 2 March 2018
Serve Detailed Route application on all Parties	4.5	Trans Mountain	immediately after the List of Participants is issued
File written evidence, and additional information (as required), and serve all Parties	4.6	Trans Mountain	6 March 2018

Event	Hearing Order reference	Person responsible	Date or deadline (11:00 am Pacific time / noon Mountain time) unless otherwise indicated)
File written evidence, and serve Trans Mountain and all other Parties	4.7	Landowners, Affected Persons, and intervenors	27 March 2018
File letter of comment, and serve Trans Mountain and all Participants	3.5	commenters	3 April 2018
File reply evidence, and serve all Parties	4.8	Trans Mountain	10 April 2018
Oral hearings begin (cross-examination and final argument) for Segment 5 in Merritt and Kamloops, BC	4.9	All Parties	late April/ early May 2018 (exact dates, times, and venues to be announced in a future procedural update)

Appendix 8 List of Issues

1. The best possible detailed route of the pipeline
2. The most appropriate method of constructing the pipeline
3. The most appropriate timing of constructing the pipeline

Appendix 9 List of interested persons to be provided with the Hearing Order

**List of interested persons to be provided with Hearing Order:
MH-001-2018 to MH-016-2018**

**Liste des parties intéressées à qui l'ordonnance d'audience doit être fournie :
MH-001-2018 à MH-016-2018**

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MH-001-2018 to MH-016-2018

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Environment Canada
Environmental Assessment Division
Prairie and Northern Region, EA South
150 – 123 Main Street
Winnipeg, MB R3C 1A3
Email/courriel: ec.enviroinfo.ec@canada.ca (send documentation via email)

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867 Lakeshore Road
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King, Kim J M JAG:EX

Subject: FW: Chansa - Service on Province of British Columbia - FW: National Energy Board - Letter - Trans Mountain Pipeline ULC – Trans Mountain Expansion Project - Decision on Motion (A89357)

From: Minister, AG AG:EX
Sent: Tuesday, January 23, 2018 6:45 PM
To: Thompson, Angella N PSSG:EX; Mbaio, Chansa JAG:EX
Subject: Chansa - Service on Province of British Columbia - FW: National Energy Board - Letter - Trans Mountain Pipeline ULC – Trans Mountain Expansion Project - Decision on Motion (A89357)

From: Barnachea, Sheryll [<mailto:SBarnachea@osler.com>]
Sent: Monday, January 22, 2018 1:43 PM
To: dnordquist@alib.ca; cmarcand@gmail.com; chief@ansn.ca; jaymie@aseniwuche.com; keri.ardell@ttml.ca; davidjimmie@squiala.com; heritagedatabank@gmail.com; greg@ashcroftband.ca; k.henry@bcmetis.com; nhoehne@nntc.ca; tcollins@nntc.ca; XT:Chief, Boston Bar Band EAO:IN; billy.morin@enochnation.ca; carol@erminekskin.ca; chief@canimlakeband.com; David Schaepe, Ph.D.; mgoold@peopleoftheriver.com; referrals@peopleoftheriver.com; mmcginity@peopleoftheriver.com; ehume@ratcliff.com; lpahan@coldwaterband.org; david.walkem@cooksferry.ca; lacsteannemetis@zoho.com; chief@cowichantribes.com; chief@halalt.org; lindsevjaywilson@gmail.com; chief@kanakabarband.ca; cecillbellrose@hotmail.com; Quadbuds@xplornet.com; Gina@montanafirstnation.com; susan@katzie.ca; jennifer_griffith@aboriginal-law.com; linette.hodges@gmail.com; amanda@aandifirstaid.com; raymond.cardinal@gmail.com; mamway@telus.net; nikapell@ktunaxa.org; eddy.makokis@saddlelake.ca; kyra@consultsamson.com; tumia.knott@severnqwantlen.ca; referrals@kwikwetlem.com; dominic@lheidli.ca; jean@lhtako.com; garnouse@lslib.com; dwayneec@stoney-nation.com; bills@stoney-nation.com; chief@larryfletcher@hbf.ca; angie@hbf.ca; sharlam@sturgeonlake.ca; mark@scfn.ca; scfnconsultation@scfn.ca; asam@lnib.net; XT:Bak, Andrew FLNR:IN; bbisset@tsawwassenfirstnation.com; chief@lsib.net; darryl.steinhauer@gmail.com; chiefthomas@lyackson.bc.ca; alice.mckay@shaw.ca; matsquiband@shaw.ca; stan.morgan@shaw.ca; cmorin-dalcol@mnbc.ca; jsanchez@musqueam.bc.ca; LudyWilson@neskonlith.net; fos1865@gmail.com; director@nicolatribal.org; ehorse34@gmail.com; donna@nicomenband.com; mshackelly@gmail.com; XT:Terbasket, Pauline Okanagan Nation Alliance EAO:IN; brendab@louisbulltribe.ca; anniec@penelakut.ca; josh.james@penelakut.ca; yilmixm@pib.ca; Niw66@hotmail.com; popkum@live.ca; gaygavt@shaw.ca; DeclanStarlight@tsuutina.com; clemseymour@seabirdisland.ca; jcharles@semiahmoofirstnation.org; percy.joe@shackan.ca; bcote@shuswapband.net; bleonard@shuswapnation.org; Nathan.Matthew@simpcw.com; siskaib@lyttonbc.net; rignace@skeetchestn.ca; wayne_christian@splatsin.ca; lisa_wilcox@squamish.net; adminassistant@statimcgs.org; shansen@millerthomson.com; susan.balfour@stsailles.com; shervlynn.crispin@stsailles.com; william.charlie@stsailles.com; chief@canoecreekband.ca; referralsclerk@bonaparteindianband.com; chief@stzuminus.com; kukpi7@kib.ca; chief@laceese@gmail.com; falec@tskwaylaxw.com; admin@tsilhqotin.ca; jkonovsky@twnation.ca; chiefandy7632@gmail.com; chief@uppernicola.com; nakcowinewak@gmail.com; allan@ocfn.ca; andrew.scott@ochiesebc.ca; referrals@usib.ca; jonathan.fe@live.ca; steve.tresierra@wpcib.com; ann.louie@williamslakeband.ca; reception@xatsull.com; khansen@yalefirstnation.ca; cliff@kinuseo.com; referrals@kellylakecreenation.com; Stoor@abbotsford.ca; Ktreloar@abbotsford.ca;

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Cc: Killoran, Maureen; Denstedt, Shawn

Subject: National Energy Board - Letter - Trans Mountain Pipeline ULC – Trans Mountain Expansion Project - Decision on Motion (A89357)

Trans Mountain Pipeline ULC
File OF-Fac-Oil-T260-2013-03 03

Dear Sir/Madam,

Pursuant to the Board's January 18 letter, please find enclosed for service upon you the Board's letter and Appendix I. The document can also be found at receipt A89357 or per the following link:

<https://apps.neb-one.gc.ca/REGDOCS/Item/View/3436359>

Regards,
Sheryll

Sent on behalf of:
Counsel for Trans Mountain Pipeline ULC

OSLER

Sheryll Barnachea
Legal Assistant to Terri-Lee Oleniuk, Sander Duncanson,
Jessica Kennedy and Mark Graham

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King, Kim J M JAG:EX

From: Minister, AG AG:EX
Sent: Monday, January 22, 2018 3:18 PM
To: Addo, Wolfgang AG:EX
Subject: Action is Information please - with a referral to CCU submitted - Many thanks! FW: 17-10-06 Trans Mountain Pipeline ULC - Withdrawal of Spawning Deterrent Relief Request (A86657) - 545887

From: s.22
Sent: Saturday, January 20, 2018 2:22 PM
To: Hoekstra, Gordon (Vancouver Sun)
Cc: Minister, ENV ENV:EX; Minister, AG AG:EX
Subject: Fwd: 17-10-06 Trans Mountain Pipeline ULC - Withdrawal of Spawning Deterrent Relief Request (A86657)

Hi Gordon;

I have spent on average 20 hours per week for the past 6 years researching the Kinder Morgan expansion s.22
s.22

Re your article about BC appealing the NEB ruling <http://vancouversun.com/business/energy/bc-considering-appeal-of-neb-dispute-process-for-permitting-of-trans-mountain-pipeline>

This is my observation:

BC has NOT been using all of the tools in its tool box. I doubt that they know the extent of Kinder Morgan's duplicity / dishonesty / bullying. The Sto:lo Collective, City of Burnaby, City of Chilliwack, Township of Langley, City of Surrey have documented this in affidavits and sworn testimony before NEB hearings. Time for Heyman, Mungal, and Eby to quit trusting bureaucrats who until recently were producing pro-pipeline (BC Liberal government) analysis and policies!

Here is an excerpt Sto:lo Collective argument at the NEB hearing in Chilliwack this past week.
<https://apps.neb-one.gc.ca/REGDOCS/File/Download/3434494>

para 3442 pg 31

"So your counsel asked a question of us, of our expert. She asked, "Would you be willing to work on communications?" With respect, that's the wrong way to ask the question because we've been willing from day one. I know you have bands who have refused to talk at this, who have refused to come here. There are bands who have refused to work with Trans Mountain in this process. We are not them. We've been here from day one. We've worked hard to have a good communications process. We've given you information. We've arrived to present, to discuss, to talk. We've communicated over -for years with Trans Mountain to try and get some info the ones who have the communications problem. mation. We're not They are not paying attention, and one can only assume at this point it's because they're doing what my sixyear pushing the boundaries. And so far I haold granddaughter does -they're ve to say to you, to the Panel of this National Energy Board, you're letting them get away with it. And that is our big submission to you. We say that we need statement from you, a clear statement, that the onus is

on Trans Mountain to communicate clearly, to fix the communication problems, and to communicate and work with the Stó:lō Collective on this project. Not just on this reroute; on the whole of the project. Number one, we say that -with pushing the access of technical kicking the can down the road. we are asking you to-not let them get away traditional ecological knowledge. They're We are many years into this project now and they keep kicking that can down the road. We're going to do it in future. There's a vague, "Well, we're going to have a workshop in February if we can come to an agreement". Well, you know what the disagreement's about. This is the same thing they said last time they were before you, "We'll have it in the future. We'll have in the future". And we're saying to you, please, give them -do not let them get it away with this because what's happening is this whole project is being undertaken without them doing the work that they need to do without them working with Stó:lō. We're asking you to put a -severe and succinct limits on them so that they cannot get away with what they're getting away with, which is running through this project without the appropriate accessing the knowledge and then I mean, and accessing is just step one.

They have to access the knowledge and then they've got to apply it. And so the longer we go without them even accessing the information, the further we get away from any application to how they're going to do the construction, to how the pipeline will be monitored, to how all of this stuff will work. 3449. Talking to any Elder isn't going to do it. I mean, the -- I think it doesn't take long to figure it out. If you, say, talk to somebody who spent their life -- one Elder may have spent her life with the plants and may know all of the plants in this whole Chilliwack area brilliantly, but she's never -- she's not a fisherman. So if you want to figure out what's going on with the fishing, you've got to talk to the guy who's -- or the woman who's experienced in that. 3450. You wouldn't expect a geologist to give you information about rivers, so you've got to have the right people in the right room, and we say we need you to put the onus on Trans Mountain to keep their feet to the fire, to give them firm, firm guidelines and objectives that they must meet and that there will be consequences if they don't meet them. 3451. And that's what we're asking you to do. We are willing to work with them, but they won't work with us, and we need you to make that happen."

Below you will see the same tricks. PIPE UP Network was an Intervenor and submitted many IRs etc. we always used s.22 but oops in their response to our Notice of Motion re the illegal installation of spawning deterrents Kinder Morgan used an email that has NEVER been used in the NEB process since we applied to be participants in the NEB expansion hearing. So are Kinder Morgan incompetent or is this a purposeful communications strategy to get the NEB to allow fast tracking of permitting because First Nations, local governments and directly affected residents are supposedly dragging our feet?

s.22

----- Forwarded message -----

From: "s.22"

Date: 12 October 2017 at 16:35

Subject: Re: 17-10-06 Trans Mountain Pipeline ULC - Withdrawal of Spawning Deterrent Relief Request (A86657)

To: "Barnachea, Sheryll" <SBarnachea@osler.com>

Thank you. My email was the one I provided when the PIPE UP Network Notice of Motion was emailed to legal counsel who sent the letter requesting relief.

s.22

Sent from my BlackBerry® powered by Virgin Mobile.

From: "Barnachea, Sheryll" <SBarnachea@osler.com>

Date: Thu, 12 Oct 2017 23:30:49 +0000

To: s.22

Cc: Regulatory@transmountain.com<Regulatory@transmountain.com>; mona.butler@neb-one.gc.ca<mona.butler@neb-one.gc.ca>

Subject: FW: 17-10-06 Trans Mountain Pipeline ULC - Withdrawal of Spawning Deterrent Relief Request (A86657)

s.22

Enclosed is the letter filed with the National Energy Board on October 6. Please note that an email was sent to the email provided on the PIPE UP Network website – pipeup.net@gmail.com on the same day.

The filing can also be found at receipt A86657 or per the following link: <https://apps.neb-one.gc.ca/REGDOCS/Item/Filing/A86657>

Regards,

Sheryll

Sent on behalf of:

Terri-Lee Oleniuk

Counsel for Trans Mountain Pipeline ULC

OSLER

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