



October 9, 2020

Filed Electronically

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Attention: Mr. Jean-Denis Charlebois
Secretary of the Commission of the
Canada Energy Regulator
("**Commission**")

Dear Mr. Charlebois:

Re: Trans Mountain Pipeline ULC ("**Trans Mountain**")
Trans Mountain Expansion Project ("**Project**" or "**TMEP**")
File OF-Fac-Oil-T260-2013-03 63
Detailed Route Hearing MH-016-2020 – Barbara Gard ("**Hearing**")
Response to Notice of Motion from Barbara Gard ("**Landowner**")

1. Overview

1. On October 8, 2020, the Landowner filed a notice of motion ("**Motion**") ([C08812](#)) requesting:
 - (a) an extension of the Landowner's October 19, 2020 evidence filing deadline ("**Landowner Evidence Deadline**") to three weeks after Trans Mountain has provided a response to the Landowner's access to information and privacy ("**ATIP**") request ("**Request A**"); or
 - (b) in the alternative to Request A, an extension of the Landowner Evidence Deadline by more than four weeks to November 17, 2020, on the basis that the Landowner requires additional time to prepare evidence ("**Request B**"); and
 - (c) the Landowner requests relief from the Commission to bring forward in to the Landowner's argument additional evidence from its ATIP documents if these documents are received from Trans Mountain after October 27, 2020 ("**Request C**"); and
 - (d) the Landowner requests a further extension of its proposed November 17, 2020 filing date to two weeks after Trans Mountain provides interim costs to the Landowner ("**Request D**").
2. This is Trans Mountain's response to the Motion.

2. Trans Mountain's Response to the Motion

2.1 *The Landowner's ATIP Request is Irrelevant to the Hearing*

3. In the Motion, Request A and B, the Landowner requests that the Landowner Evidence Deadline be extended on the basis that Trans Mountain has not responded to the Landowner's ATIP request. In Request C the Landowner requests permission to bring forward additional evidence that may result from their ATIP request.
4. Detailed Route Hearings fall under the authority of the Commission through power granted by the *Canadian Energy Regulator Act*, SC 2019, c 28, s 10 ("**CER Act**"). ATIP requests are a separate matter under the authority of the *Access to Information Act*, RSC, 1985, c A-1.
5. ATIP requests to Trans Mountain are not within the Hearing scope, or Commission's jurisdiction. As a result, Trans Mountain submits that outstanding ATIP requests are not sufficient grounds for extension requests for Detailed Route Hearings. The Commission has previously confirmed that ATIP requests are outside the Commission's authority ([C07687](#)):

The Access to Information Act provides Canadians with the right to access records that are held by a federal government department or agency and are not publicly available. The Access to Information Act would allow Mr. Scory to request records held by the Canada Energy Regulator, but it does not provide authority for the Commission to direct Trans Mountain to produce any records in its possession. Since Mr. Scory's request is for records held by Trans Mountain, and not by the Canada Energy Regulator, the Access to Information Act does not apply.

6. In Trans Mountain's view, the Commission should deny the Landowner's extension Requests A, B and C in the Motion, on the basis that ATIP requests to Trans Mountain are outside of the scope of the Hearing.

2.2 *Trans Mountain Consents to a Two-Week Extension to the Landowner Evidence Deadline*

7. Trans Mountain understands that the Landowner requires sufficient time to prepare their evidence, including time to review Trans Mountain's Information Request ("**IR**") to the Landowner which was filed on October 6, 2020 ([C08763](#)).
8. Trans Mountain consents to a two-week extension to the Landowner Evidence Deadline from October 19, 2020 to November 2, 2020. Trans Mountain requests that subsequent procedural steps, including its reply evidence deadline also be extended by two weeks, as shown in the table below:

Hearing step (responsible person[s] in bold)	Date or deadline (3:00 pm Pacific time [4:00 pm Mountain time])	Trans Mountain's Proposed Dates
SOO Filer files written evidence, including photographs and/or videos depicting areas or features of particular concern	19 October 2020 [formerly 5 October 2020]	2 November 2020
Commenter files letter of comment	19 October 2020 [formerly 5 October 2020]	2 November 2020
Trans Mountain files IRs regarding SOO Filer's evidence	23 October 2020 [formerly 9 October 2020]	6 November 2020
SOO Filer files responses to IRs	2 November 2020 [formerly 19 October 2020]	16 November 2020
Trans Mountain files reply evidence	9 November 2020 [formerly 26 October 2020]	23 November 2020

9. Trans Mountain is respectful of the Landowner's computer challenges and consents to a two-week extension. However, Trans Mountain notes that the Landowner has had more than adequate time to hire professional help. The Hearing Order for the Hearing ("**Hearing Order**") ([C07258-3](#)) was issued on July 9, 2020. The Landowner had had four months to seek assistance for the Hearing process. As such, Trans Mountain submits that computer challenges are not a valid reason for further extensions.
10. Trans Mountain disagrees with the Landowner's assertion in the Motion that Trans Mountain has failed to provide full and adequate responses to the Landowner's second IR, nor has the Landowner substantiated this assertion. Trans Mountain has recently filed its Supplemental Evidence ([C07459](#)) and two rounds of IR responses ([C08763](#) and [C07809](#)) to the Commission (including its engagement records). The evidence submitted by Trans Mountain represents the basis of its response to the Landowner's Statements of Opposition ([A84306](#) and [C01705](#)) and IRs. The Landowner has had the opportunity to test Trans Mountain's evidence and can respond to Trans Mountain's case in the Landowner Evidence. However, the Landowner is not entitled under the Hearing Order to go on a fishing expedition and not explain how any additional information sought is relevant or useful to the Commission's determination of the matters within the scope of the Hearing.
11. The Landowner has not demonstrated what relevant and significant information, within the scope of the Hearing, potentially lies in the hands of Trans Mountain that could help inform either the Commission, or the Landowner's case. Accordingly, Trans Mountain submits that no more than a two-week extension is appropriate.

2.3 The Landowner's Interim Cost Request is Irrelevant to the Hearing

12. Trans Mountain received an interim cost request from the Landowner at 9:30 pm MT on Wednesday, October 7, 2020, which it is reviewing. The Landowner claims in the Motion filed October 8, 2020 that it's Landowner Evidence Deadline should be further extended to two weeks after the date that Trans Mountain provides its requested interim costs.
13. In Trans Mountain's view, it is unreasonable for the Landowner to expect immediate payment of interim costs. Trans Mountain accepts its responsibility to pay reasonable interim and final costs under the CER Act, if sufficient supporting information is provided by landowners. However, the Commission has been clear in previous rulings and the Hearing Order that costs are to be decided separately from the Hearing and cannot be used as a basis for delaying the hearing steps.
14. Regarding the reimbursement of costs, the Hearing Order Letter ([C07258-1](#)) states:

The process details about how this works can be found in the *National Energy Board Rules of Practice and Procedure*, 1995. Any requests for the reimbursement of costs will be considered by the Commission **independently from the detailed route hearing processes**. [emphasis in Hearing Order Letter]
15. In the September 1, 2020 Ruling regarding an extension request in the Detailed Route Hearing for Robin Scory ([C08125](#)), the Commission confirmed that costs are not a relevant factor for granting an extension:

Although Mr. Scory states that he requires payment from Trans Mountain to obtain legal counsel, the Commission observes that the Canadian Energy Regulator Act enables hearing participants to recover costs from Trans Mountain and sets out a process to follow in case of disagreement. As the Commission has stated previously ([C04275](#)), costs issues are deliberated outside of the detailed route process, and are not a relevant consideration in assessing an extension request.
16. It is clear that costs cannot be used as a basis for an extension. Accordingly, Trans Mountain submits that Request D should be denied.

3. Requested Relief

17. Trans Mountain has reasonably consented to the Landowner's request for more time by consenting to a two-week extension. Any further delay would result in prejudice to Trans Mountain by delaying regulatory approval, if granted, and potentially construction. Phase 1 of construction is expected to begin in Q1 of 2021 as stated in Trans Mountain's Supplemental Evidence ([C07459](#)).

18. For the above reasons Trans Mountain requests that the Commission:
- (a) extend the Landowner Evidence Deadline, and subsequent procedural steps, by no more than 2 weeks (in response to Request A and Request B);
 - (b) decline any further process changes, including permission for late filing of evidence based on ATIP information, based on the Landowner's ATIP request (in response to Request A and Request C); and,
 - (c) decline any further extensions to the Hearing process on the basis of the Landowner's interim cost requests (in response to Request D).

Yours truly,

Cassels Brock & Blackwell LLP

A handwritten signature in black ink, appearing to read 'Jeremy Barretto', with a horizontal line extending to the right.

Jeremy Barretto
Partner