



11 December 2020

Filed Electronically

Canada Energy Regulator
Suite 210, 517 10 Ave SW
Calgary, AB T2R 0A8

Attention: Mr. Jean-Denis Charlebois
Secretary of the Commission of the
Canadian Energy Regulator ("Commission" or "CER")

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-010-2020 ("Hearing")
**Comment of Chilliwack District Parent Advisory Council (DPAC) on Trans
Mountain's Notice of Motion C10153**

On December 3, 2020 Trans Mountain filed its Reply Argument for the District Parent Advisory Council and the Chilliwack Board of Education (C10152) in the Hearing. Also on December 3, 2020 Trans Mountain filed a "Notice of Motion – Request to Include City of Chilliwack Reply Evidence in the Hearing Record for the Hearings" ("Motion") (C10153).

Trans Mountain's Motion asked to have Trans Mountain's Reply Evidence for the City (C08078) included on the Hearing record for the Hearing and other hearings in Chilliwack. The Motion expressed Trans Mountain's view that there should be no further process to address Trans Mountain's Reply Evidence for the City in the Hearing. However, that in the alternative, Trans Mountain would consent to an expedited supplemental written argument process, in the event that any of the SOO Filers have additional argument limited to the City Evidence. If such a process is granted, Trans Mountain requests an opportunity to provide supplemental reply argument with the same limitations.

In Grounds for the Motion Trans Mountain say "The Board of Education did not file evidence indicating its preference for the City Alternate Route." In fact, the Board of Education did not file evidence. However, in the hearing order C04466-3 page 5 the Commission wrote:



“As with the STSA, the City of Chilliwack’s (Chilliwack) geographical interests also span across all other Hearings covered by this Hearing Order. If Chilliwack wishes to file evidence related to the specific tract(s) covered by a particular Hearing, Chilliwack is responsible for filing that evidence in that Hearing (by referencing its unique hearing number). The Commission will not place the full record of the current MH-026-2020 Hearing in the online folder for each of the other Hearings.”

The City of Chilliwack subsequently did file evidence in the Hearing and did attend the oral portion of the Hearing on November 24, 2020 and both the City of Chilliwack and the Board of Education filed written arguments in the Hearing on November 26, 2020, C09932 and C09930 respectively.

In the Motion paragraph 9 Trans Mountain say that “Based on the City Argument and the Board of Education Argument, which were both filed on November 26, 2020, the Commission is being asked the (sic) consider the City Evidence in the context of the lands subject to each of the Hearings.”

DPAC submits that Trans Mountain misrepresents the role of evidence and argument in paragraph 9 of the Motion. It is DPAC’s understanding that the Commission would consider all evidence on the hearing record in the natural course of any hearing, and that it is not only evidence that is raised in any party’s argument that asks the Commission to consider evidence.

Trans Mountain address four factors to justify inclusion of late evidence. Those four factors being:

1. whether the evidence is relevant;
2. whether the party seeking to admit the evidence has a justifiable reason for the late filing, or whether it acted with due diligence;
3. any prejudice to other parties if the motion were granted; and
4. the probative value of the evidence, or its usefulness to the Commission.

On the first of the four factors, DPAC agrees that at least some of Trans Mountain’s Reply Evidence for the City is relevant given that in the Motion Trans Mountain say that the Reply Evidence for the City sets out Trans Mountain’s review of the City Alternate Route.

However DPAC notes that in Trans Mountain’s Reply Argument for the District Parent Advisory Council and the Chilliwack Board of Education (C10152) Trans Mountain already addressed the City Alternate Route, using those words "City Alternate Route" sixteen times across the four pages of the Reply Argument for the City of Chilliwack that was included as an appendix in C10152. Trans Mountain having already addressed the City Alternate Route in Reply Argument



in the Hearing, it is not clear to DPAC why Trans Mountain need to bring new evidence, that presumably addresses multiple topics in addition to the City Alternate Route, into the Hearing.

Regarding the second of the four factors, DPAC does not agree that Trans Mountain has a justifiable reason for the late filing of evidence. Trans Mountain has multiple staff and lawyers engaged in detailed route hearings. There having been many detailed route hearings on the Project, it seems reasonable to conclude that Trans Mountain's staff and lawyers so engaged have experience in detailed route hearings far greater than the combined experience of DPAC, the Board of Education and the City of Chilliwack. Trans Mountain knew or should have known that the City of Chilliwack had filed evidence in the Hearing and that parties to the hearing might refer to that evidence in arguments. The City of Chilliwack's Written Evidence C06901 was filed on June 18, 2020. Trans Mountain's Reply Evidence in the Hearing was due October 15, 2020. Trans Mountain had nearly four months to prepare any reply to the City's evidence in the Hearing. Yet they chose to raise the matter on what would have been the day of the close of record for the Hearing.

DPAC notes incongruities between Trans Mountain's Reply Argument in the Hearing (C10152) and the Motion. In C10152 page 9 paragraph 32 Trans Mountain ask the Commission to disregard submissions in DPAC's Argument, found in paragraphs 3167-3168, and 3187-3188 of the transcript as new evidence, despite that in both instances those paragraphs contain argument pertaining to the weight to be given Trans Mountain's evidence that was identified in the transcript paragraphs 3166 and 3186. Then in the same Reply Argument C10152 Trans Mountain cite their Reply Evidence to the City (C08078) that is the subject of the Motion four times, C10152 footnotes 2, 4, 16 and 17. That those references in Trans Mountain's Reply Evidence to the City in C10152 is new evidence seems not to be in dispute, as demonstrated by the Motion.

Third in the four factors is prejudice to other parties. Arguably the Motion itself is already prejudice to other parties as we are forced to engage in responding to the Motion just at the time we thought our role in the Hearing had concluded, work that must be undertaken on top of our normal work, family and other responsibilities. The Motion asks to have Trans Mountain's Reply Evidence for the City of Chilliwack from hearing MH-026-2020 placed in its entirety onto the record of our hearing, MH-010-2020. It is difficult for DPAC to assess what prejudice this may impose without being fully familiar with the Reply Evidence from MH-026-2020. DPAC would certainly need time to review that Reply Evidence carefully, and any additional documents that may help provide context to it.

On the final of the four factors, the probative value of the evidence, or its usefulness to the Commission, DPAC would defer to the Commission to assess. However we would point out again that Trans Mountain already addressed the City Alternative Route in its Reply Argument C10152 in the Hearing.



Given the overlapping nature of the hearings both in geography and concerns of SOO filers, DPAC is willing to accept some latitude with regard to the distinction between evidence and argument if that is something the Commission can apply discretion to. However, it is DPAC's view that the relief requested in the Motion is neither justified nor necessary, and that the Motion should be denied.

In the alternative, if the Commission allow Trans Mountain's Reply Evidence from the hearing MH-026-2020 to be placed on the record of MH-010-2020, DPAC would think it necessary and fair for the SOO filers to be provided time and opportunity to respond. A written supplemental argument filing would be sufficient for this. However we hope that the Commission will consider that Christmas is only one week from this date, and New Years a week from that. The Motion comes at a difficult time for families, and so for the volunteers of the District Parent Advisory Council. If it is possible we would appreciate a filing deadline early in January of 2021 to allow us such family time around the holidays as covid restrictions will allow.

Sincerely,

A handwritten signature in blue ink that reads "Christine Goodman".

Christine Goodman
DPAC representative for the Hearing,
School District #33, Chilliwack