



Canada Energy
Regulator

Régie de l'énergie
du Canada

**Westcoast Energy Inc.
Abandonment Application for Pointed Mountain Pipeline (Project)**

**File Number OF-Fac-Gas-W102-2022-01 01
Hearing Order MH-004-2022
15 November 2022**

1. An Overview

On 2 February 2022, Westcoast Energy Inc. (**Westcoast**) filed an application (**Application**) with the Canada Energy Regulator (**CER**) to abandon the Pointed Mountain Pipeline pursuant to subsection 241(1) of the *Canadian Energy Regulator Act* (**CER Act**) ([C17537](#)). The Commission of the CER (**Commission**) is the decision maker for this Application under the CER Act. The proposed abandonment will involve the approximately 55 kilometre, 508 millimetre (20 inch) Pointed Mountain Pipeline (**Pipeline**) located in a remote area crossing the Yukon Territory, Northwest Territories, and British Columbia borders (Appendix I).

By letter dated 12 August 2022 ([C20518](#)), the Commission confirmed that it is a designated regulatory agency under the *Mackenzie Valley Resource Management Act* (**MVRMA**) for the Project. As such, the Commission would be conducting a preliminary screening pursuant to subsection 124(1) of the MVRMA, in advance of its regulatory review of the Project.

A Yukon Environmental and Socio-economic Assessment Board assessment is also required to be completed. The CER is an independent regulatory agency and not a decision body under the *Yukon Environmental and Socio-economic Assessment Act*. However, the Commission must consider a decision document that is issued before allowing the Project to be undertaken.

To date, Westcoast has served and published a Notice of Abandonment (in English) pursuant to subsection 241(2) of the CER Act in February 2022 (and again, in both official languages, in June 2022) and has served and published a Notice of Preliminary Screening as directed by the Commission in August 2022 ([C20518](#)). Each of the Notices published and served included a 30-day comment period for those potentially affected by the proposed abandonment. As a result of these notifications, the Commission received two letters of comment. The first was a statement of opposition from the Acho Dene Koe First Nation ([C17969](#)) which was later withdrawn ([C18463](#)). The second was filed by Liard First Nation ([C21041](#)), who submitted preliminary concerns and questions and stated that they had not received financial support to conduct a thorough review. While this letter was filed in response to the Notice of Preliminary Screening, Liard First Nation stated that it was an initial submission and request for information regarding the Application. Concerns raised in the letter included:

- the Project spans approximately 55 kilometres of Kaska traditional territory where the Liard First Nation people exercise Aboriginal rights and title; and
- the potential impact to the Liard First Nation (and Kaska traditional territory) associated with the long-term degradation of the Pipeline.

Notwithstanding that Liard First Nation's concerns have the potential to be resolved, the Commission finds that in substance the letter is a written statement of opposition to the Application.

Considering the letter filed, as well as Westcoast's reply to the letter ([C21383](#)), the Commission finds that the letter from Liard First Nation was made in good faith and was not frivolous or vexatious.¹ While Westcoast responded to specific requests for information from Liard First Nation, the letter from Liard First Nation has not been withdrawn. The Commission has set out a hearing process pursuant to subsection 241(3) of the CER Act. Participant funding will be provided as part of that process. The Commission has set out a List of Issues that it will consider (Appendix II).

¹ The test for holding a public hearing under subsection 241(3) of the CER Act.

First the Commission will prepare a preliminary screening under the MVRMA, considering the evidence submitted. Later the Commission will make a decision under the CER Act on the Application. The information filed with, and issued by, the Commission is referred to as the record of the hearing. The hearing record can be found in the CER's [online public registry for this hearing](#).² The [National Energy Board Rules of Practice and Procedure, 1995 \(Rules\)](#) provide detailed information about the Commission's [hearing processes](#) in general and the rights of parties. In the event of a discrepancy between the Rules and this Hearing Order, this Hearing Order should be followed.

2. Participation

If you have comments for the Commission to consider regarding the Application, including those in relation to its Preliminary Screening determination, you must register your participation with the CER as an intervenor and serve this registration on Westcoast. The Commission recognizes the Liard First Nation as an intervenor based on their earlier submission and additional registration is not required. The deadline to register to participate in the hearing **is on or before 8 December 2022**.

The CER's Participant Funding Program (**PFP**) is available for this hearing. Indigenous peoples and organizations are eligible for a \$20,000 grant when they participate as an intervenor. Simply email PFP.PAFP@cer-rec.gc.ca to indicate your interest in this grant.

3. Hearing steps and deadlines

Hearing steps and deadlines are provided in the Timetable of Events (Appendix III). At this time, the Commission has included the preliminary hearing steps including written submissions relating to the Preliminary Screening. In the event that the Commission's Preliminary Screening determination does not refer the proposal to the Mackenzie Valley Environmental Impact Review Board, further process steps will be released.

The Commission recognizes that written submissions may be relevant to both the Preliminary Screening determination as well as the consideration of an authorization pursuant to subsection 241(1) of the CER Act. Although the Commission has procedurally separated the two requirements, for clarity, submissions may be relevant for consideration under both. Comments relating to a potential CER Act authorization and the List of Issues presented below, will likely also be heard once the Preliminary Screening determination has been made (further discussed in Section 3.3 below).

The initial process steps and deadlines set out in this Hearing Order are intended to make the hearing fair, inclusive, transparent, and efficient, and to provide certainty to all Parties involved. When you must file documents by a certain deadline, the intended recipients must receive the documents by 4:00 pm, Mountain Time, on the date of the deadline. Late filings will not be accepted, except with permission of the Commission. If you cannot meet a deadline, you must file a notice of motion with the CER (Section 4.2) before the deadline to request an extension and serve a copy of this request on the other Party. Where possible, such a request should be made well ahead of any applicable deadline.

3.1. Written submissions from intervenors

Comments to be considered by the Commission related to its Preliminary Screening determination can be filed in writing **on or before 26 January 2023**. These comments

² <https://apps.cer-rec.gc.ca/REGDOCS/Item/View/4198907>

should include:

- A reference to Hearing Order **MH-004-2022** and file number **OF-Fac-Gas-W102-2022-01 01**;
- Your name, mailing address, email address and the name of the person or group that you represent (if you represent one);
- Your comments on how you or the person or group that you represent will be impacted by the proposed abandonment;
- Your views on whether or not the proposed abandonment might have a significant adverse impact on the environment or might be a cause of public concern; and
- Any documentation and/or other submissions that you feel explain or support your views.

Your written submission must also be served on Westcoast at:

Adam Oswell
Senior Regulatory Advisor
Enbridge Inc.
Suite 200, 425 - 1 Street SW
Calgary, AB T2P 3L8
Email adam.oswell@enbridge.com

Rachel S. Kolber
Senior Legal Counsel
Enbridge Inc.
Suite 200, 425 - 1 Street SW
Calgary, AB T2P 3L8
Email Rachel.kolber@enbridge.com

3.2. Reply to written submissions

Westcoast can reply to all submissions received. Any reply must be filed with the CER **on or before 9 February 2023** and served on the same date on all persons who filed submissions.

3.3. Preliminary Screening determination

As set out under the MVRMA, the purpose of a Preliminary Screening is to determine whether the development might have a significant adverse impact on the environment, or might be a cause of public concern, and must be determined before issuing a licence, permit or other authorization.

Once written submissions are received, the Commission will consider all the evidence on the record before making its determination. The Commission will publicly issue its written determination with reasons. Should the Preliminary Screening indicate that the proposal will not have a significant adverse impact on the environment and will not be a cause of public concern, the Commission will release additional process steps to hear comments relating to a potential authorization pursuant to subsection 241(1) of the CER Act, and as set out in the List of Issues.

4. Preparing and Filing documents

Any document filed with the CER in this hearing must refer to file number **OF-Fac-Gas-W102-2022-01 01** and hearing number **MH-004-2022**.

Each filing must be addressed to the Secretary of the Commission:

Secretary of the Commission
Canada Energy Regulator
Suite 210, 517 Tenth Avenue SW
Calgary, AB T2R 0A8

All documents filed online must be in PDF format, with all pages numbered consecutively. If referring to information from a website, do not simply provide the website links. Instead, provide the actual information being referred to and the date the information was taken from the website.

4.1. Making filings

The CER's preferred method of filing is online through its [e-filing tool](#), which provides step-by-step instructions. Parties may also refer to the [Filer's Guide to Electronic Submission](#) for more information. If you are unable to file a document online, it may be filed (in PDF format) by email at secretary@cer-rec.gc.ca.

Each party must serve a copy of any filings on the other parties (i.e., Westcoast must provide a copy of any filings it makes to Liard First Nation, and Liard First Nation must provide a copy of any filings it makes to Westcoast). The cover letter accompanying this Hearing Order includes the contact information for Liard First Nation and Westcoast, and their authorized representatives. A List of Parties with contact information will be released should additional registrations be received.

If a Party cannot meet a deadline set out in this Hearing Order, they must file a notice of motion with the CER (Section 4.2) and serve a copy of this request on the other Party. Any such request must include:

- The reason why the deadline cannot be met;
- What value the late filing will provide to the Commission;
- The requester's views as to whether the other Party could be prejudiced as a result of extending a deadline; and
- Any other relevant information that the requester wants the Commission to consider.

The Commission may seek comments on the request prior to deciding on it.

4.2. Notice of motion

If Parties want to ask the Commission to do something, they must file a request (referred to as a **notice of motion**), the requirements of which are fully outlined in section 35 of the [Rules](#). Notices of motion must be filed as soon as possible, as late notices of motion may disrupt the hearing schedule. If a notice of motion is not filed on a timely basis, the Commission may decide that it will not consider it.

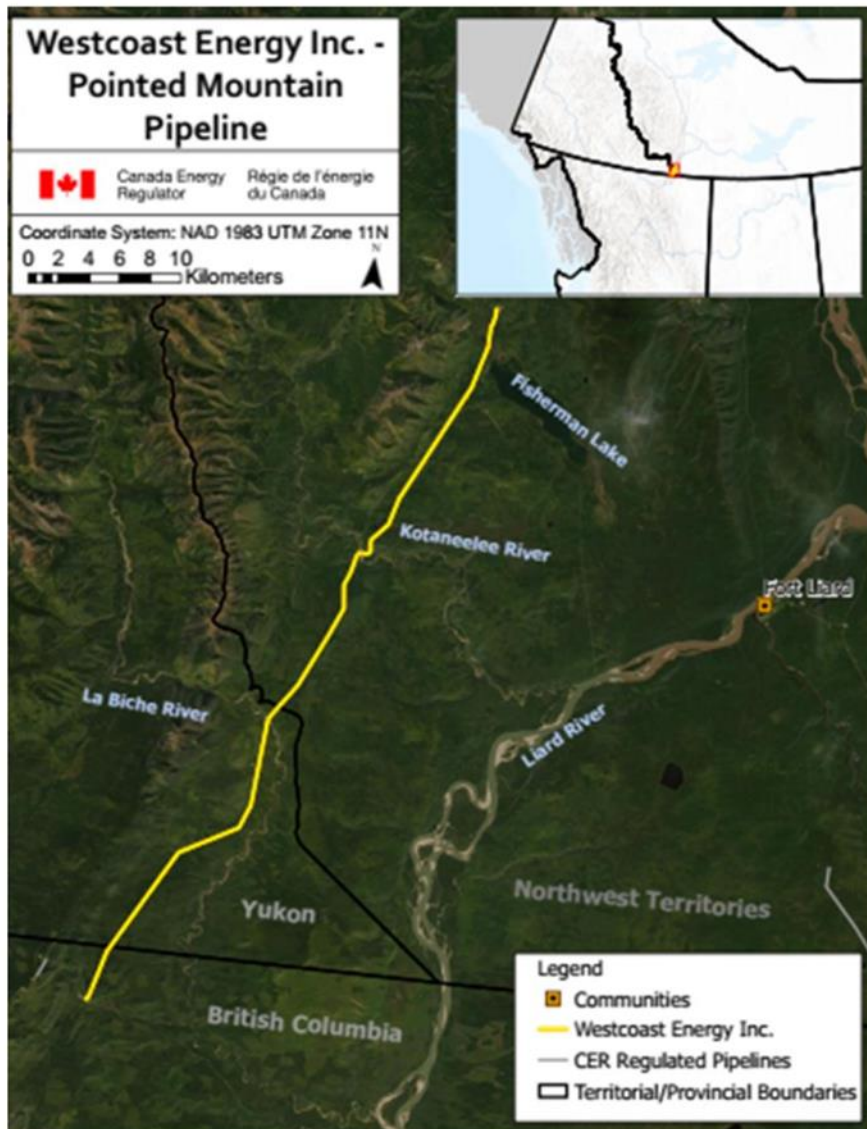
If any Party is relying on case law or other authorities to support their position on a notice of motion, they must file a book of authorities and highlight the specific passages they are relying on. They must file a copy on the record and send a copy to the other Party.

COMMISSION OF THE CANADA ENERGY REGULATOR

Signed by

Ramona Sladic
Secretary of the Commission

Appendix I – Location of proposed abandonment



Appendix II – List of Issues

1. Safety and security of persons and the protection of property and the environment during abandonment and post-abandonment activities, including emergency response and third-party damage.
2. Contingency planning for product release, accidents or malfunctions, during abandonment activities of the Project.
3. Potential environment and socio-economic effects during abandonment and post-abandonment activities, including cumulative effects as required to be considered by the Filing Manual.
4. Potential effects on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*.
5. Suitability of the proposed method of abandonment, including the timing of abandonment activities.
6. Suitability and timing of post-abandonment activities, including monitoring and remediation.
7. Appropriateness of conditions to mitigate any potential impacts, for any authorization the Commission may issue.

Appendix III – Timetable of Events

Event*	Hearing Order Reference	Responsible Participant	Date or Deadline (4 pm Mountain time)
Hearing Order	2.1	Commission	15 November 2022
Deadline to register to participate and to contact the Participant Funding Program	2	Interested persons	8 December 2022
Written submissions	3.1	Intervenors	26 January 2023
Reply to written submission	3.2	Westcoast	9 February 2023
Preliminary Screening determination with Reasons	3.3	Commission	TBD

* Events in green are in relation to the MVRMA Preliminary Screening determination.