February 28, 2021

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

Attention: Mr. Jean-Denis Charlebois,

Dear Mr. Charlebois:

Re: Trans Mountain Pipeline ULC ("Trans Mountain")
Letter Responding to Trans Mountain's Request to Treat Certificate of Insurance Information Confidentially
CER File: OF-Gen-06 FRR

I write to the Canada Energy Regulator as a former President and CEO of the Insurance Corporation of British Columbia with many decades of experience in finance and insurance including underwriting and claims. As well, I was an expert witness at the Northern Gateway hearing qualified in insurance and economic matters. My recommendation of $1 billion in mandatory financial resources included in my evidence was appreciated by the Joint Review Panel and made its way into the Pipeline Safety Act.

On February 22, 2021, Trans Mountain requested that its filing of Certificates of Insurance be treated confidentially. Trans Mountain claims that, "If the name of Trans Mountain's insurers is disclosed publicly, ongoing targeting and pressure on those insurers to stop insuring the Pipeline are likely to result in material loss to Trans Mountain and its shippers in the form of (i) higher insurance premiums (due to a smaller pool of insurers available to Trans Mountain); and (ii) challenges in maintaining adequate insurance coverage to fulfil its significant financial resource obligations under section 138 of the CER Act." [1] [2]

Trans Mountain's argument is specious—it might have the appearance of potential plausibility but falls apart when an understanding of Trans Mountain's safety risk, insurance underwriting practices and industry trends is brought into the discussion.

Granting Trans Mountain's request will do nothing to increase the number of insurers willing to provide coverage or reduce premiums, however, it will erode the public's trust in the CER. The CER should be aware that it is not in the public interest for the credibility of the Regulator to be undermined by supporting Trans Mountain's self-serving request to avoid transparency and accountability.

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[1] Trans Mountain Letter, Confidentiality Request, February 22, 2021, A7R4F6, page 3.

[2] Trans Mountain asserts 'material loss' without any evidence of the nature or magnitude of the so-called loss. If material loss is asserted, a definition of 'material' should be provided. The current cost of insurance is roughly 3 cents per barrel. In April 2020, Trans Mountain reported to the CER that the cost of insurance would increase by **less than a third of a cent per barrel** over the cost of 2019. See Schedule 4, 2020 Final Toll Calculation Schedules.

1. Trans Mountain's Risk Profile Increased Due to Trans Mountain's Lack of a Safety Culture

Nowhere in Trans Mountain's letter does the company acknowledge the clear relationship between insurance premiums and the company's poor safety performance. Trans Mountain's June 2020 spill event that shut down the existing pipeline and the tragic accidents that took place during the latter part of 2020—events that by Trans Mountain's own admission caused it to cease construction on the new pipeline for months—would have a significant impact on future insurance programs.[3]

The pipeline spill costs would likely have been less than Trans Mountain's deductible, however, spill events impact underwriting decisions whether or not insurance covers some or all of the costs. Even without spills, Trans Mountain would expect rising premiums. This is a 68-year old pipeline—its spill risk goes up with each passing year.

Trans Mountain has ignored the relationship between the potential for major or catastrophic spill events on the existing pipeline while the expansion is constructed in proximity. Trans Mountain did not begin construction until the fall of 2020 and construction is likely to continue for another three years (the in-service date of December 2022 being unrealistic). This increased proximity risk would impact the availability and price for insurance on the legacy line.

There is clear evidence (at least clear to underwriters) that the construction project increasingly demands executive attention which increases the operational risk of the existing pipeline. Trans Mountain is under a significant amount of political pressure to complete the expansion for $12.6 billion by December 2022. Neither of these goals are achievable, however that does not alleviate the pressure Trans Mountain executives and staff are under. Insurers would be aware of the political risks inherent in Trans Mountain's new ownership and price this into coverage for existing assets.

2. Insurance Underwriting Practices

Insurers underwrite risk. Trans Mountain would have the Regulator believe that a 68-year old pipeline operated by a company with a self-disclosed lack of safety culture and recently severed from the corporate support of one of the largest pipeline operators in North America has no impact on insurance availability or cost. Rather, Trans Mountain claims that the **only** factor affecting their access to insurance and the quantum of their premiums is whether or not the public knows which companies are providing that insurance. This is nonsense.

Trans Mountain's assertion that targeted public pressure is reducing the number of companies willing to provide insurance and increasing premiums for those willing to do so is hearsay. At the very least the CER should request that Trans Mountain provide affidavits from insurers to

[3] Trans Mountain, Press Release, Trans Mountain Resumes Work on Expansion Project, February 8, 2021. "The restart process will begin with the safety re-training and re-orientation of all (7,000) supervisors and workers—**before construction resumes**." (emphasis added).

show proof that they are withholding coverage and raising rates for Trans Mountain's insurance program because their names have been made public.

By asserting that targeted public pressure, and only targeted public pressure, is what determines if, and at what price, coverage will be offered, Trans Mountain misrepresents the insurance industry. It is likely that Trans Mountain has done more to turn insurers off providing coverage for the 68-year old pipeline in the future because its letter represents its insurers as malleable and unprofessional.

There is no question that the insurance industry is increasingly aware of climate change and the mounting insurance costs related to it. There is no question that stranded assets in the tar sands are ballooning and financial fallout from the structural shift this portends is on the horizon. The insurance industry is adjusting underwriting decisions accordingly. A poorly managed fossil fuel company with a lack of safety culture is an easy client to cut loose. Instead of running to the CER to help it skirt transparency and accountability, Trans Mountain would be well advised to refocus its executive efforts on improving the management of its operations.

In reality, the existence or absence of public pressure on insuring a pipeline is not how major and catastrophic risk is underwritten. Public pressure may be a way to communicate concerns—and the freedom to publicly express concerns is critical to a healthy democracy—but it does not change underwriting practices any more than public pressure to provide insurance for an uninsurable risk would be expected to create a market.

3. Industry Trends

Trans Mountain is perhaps unaware of insurance industry trends, particularly as they pertain to liability insurance for major or catastrophic events. This is regrettable as knowledge of global realities may have forestalled the submission of Trans Mountain's ill-conceived letter.

BC Hydro—British Columbia's crown corporation that produces electricity—is often characterized as providing clean energy and thus its insurers would not be subjected to the pressure Trans Mountain says its insurers are subjected to.

In its Revenue Requirement Application to the BC Utilities Commissions on December 22, 2020, BC Hydro explained why its large limit insurance costs have increased significantly. BC Hydro stated: "Insurance costs are increasing due to **the low supply of reasonably-priced insurance** in the market along with **steady demand (particularly for catastrophe insurance or large limit insurance** which is a major component of BC Hydro's insurance costs). Due to these **global market factors**, insurers are increasing rates, and in some cases de-risking their portfolio and deploying less capacity (or in some cases exiting the market entirely). Less supply in the market and lack of competition among insurers resulted in **substantial premium increases** in fiscal 2021. **This upward pressure on premiums is expected to continue into fiscal 2022."** [4] (emphasis added)

[4] BC Hydro, Fiscal 2022 Revenue Requirements Application Fiscal 2022, December 22, 2020, page 7-18.

In summary, Trans Mountain's claims deflect away from the role Trans Mountain's unsafe corporate culture plays, mocks the underwriting practices of insurance companies and ignores global market trends. Trans Mountain's unsupported claims are little more than a continuation of the company's well documented efforts to demonize concerned Canadians and First Nations people. Enabling this continued attack on democracy by approving Trans Mountain's request is not in the public interest.

Sincerely,

Robyn Allan
Independent Economist
9294 Emerald Drive
Whistler BC
V8E 0G5