

VIA ELECTRONIC SUBMISSION

February 22, 2021

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

Attention: Mr. Jean-Denis Charlebois, Secretary of the Commission

Dear Mr. Charlebois:

**Re: Trans Mountain Pipeline ULC (“Trans Mountain”)
Financial Resource Requirement Plan
Order AO-001-FRO-002-2017 (“Amended Order”)
Request to Treat Certificate of Insurance Information Confidentially
CER File: OF-Gen-06 FRR**

Background

Pursuant to Condition 6 of the Amended Order and Section 8.1 of the Canada Energy Regulator’s (“CER”) *Pipeline Financial Requirements Guidelines* (“Guidelines”), Trans Mountain must file an annual update to its Financial Resources Plan by April 30, 2021. Pursuant to the Guidelines, this annual filing must include an updated certificate of insurance.

In past years, Trans Mountain has filed its certificate of insurance without requesting confidential treatment of any information contained therein. However, for reasons set out herein, present circumstances require confidential treatment of certain information in the certificate of insurance. Trans Mountain therefore submits this confidentiality request in advance of providing its annual compliance filing pursuant to Condition 6 of the Amended Order for 2021.

Relief Sought

Pursuant to section 60 of the *Canadian Energy Regulator Act* (“CER Act”), Trans Mountain requests an order permitting it to file in confidence information in its certificate of insurance disclosing the names of its insurers (the “Confidential Information”). Trans Mountain requests that the confidential treatment of the Confidential Information under section 60 of the CER Act be applied to all future filings of its certificate of insurance under Condition 6 of the Amended Order.

Trans Mountain respectfully requests that the Commission of the CER (“Commission”) render a decision on this request no later than March 15, 2021 so that Trans Mountain has sufficient notice prior to filing its Financial Resources Plan update on or before April 30, 2021.

Grounds

Under section 60 of the CER Act, a party may request that the Commission treat information in CER filings as confidential. The Commission may take any measures and make any order that it considers necessary to ensure the confidentiality of information if it is satisfied that the information meets one of the tests for confidentiality in sections 60(a) or (b). These alternative tests are:¹

- (a) disclosure of the information could reasonably be expected to result in a material loss or gain to a person directly affected by the proceedings, or could reasonably be expected to prejudice the person's competitive position; [or]
- (b) the information is financial, commercial, scientific or technical information that is confidential information provided to the Regulator and
 - (i) the information has been consistently treated as confidential by a person directly affected by the proceedings, and
 - (ii) the Commission or designated officer considers that the person's interest in confidentiality outweighs the public interest in disclosure of the proceedings; ...

The grounds for the relief sought herein are as follows:

- (a) pursuant to section 60(a) of the CER Act, disclosure of the Confidential Information could reasonably be expected to result in a material loss to Trans Mountain and prejudice the competitive position of its insurers; and
- (b) pursuant to section 60(b) of the CER Act, the Confidential Information is commercial in nature, is consistently treated as confidential by Trans Mountain and Trans Mountain's interest in confidentiality outweighs the public interests in disclosure.

Application of Section 60(a) of the CER Act

Recently, insurance companies have faced negative pressure for insuring the Trans Mountain Pipeline (the "Pipeline").² There is evidence that certain parties have used public filings on the CER's database to identify insurers in order to pressure them to drop their policy for the Pipeline.³

¹ *Canadian Energy Regulator Act*, SC 2019, c 28, s 10, s 60.

² See, for example: "Multiple protestors arrested at downtown Vancouver anti-pipeline demonstration," CTV News Vancouver (February 19, 2021), online: <https://bc.ctvnews.ca/multiple-protesters-arrested-at-downtown-vancouver-anti-pipeline-demonstration-1.5317004>; Valeria Volcovici, "Insurers Pressed to Drop Coverage of Canada's Oil Sands Pipeline," *Insurance Journal* (August 8, 2019), online: <https://www.insurancejournal.com/news/international/2019/08/08/535239.htm>; "Insurance company Zurich drops coverage for Trans Mountain oil pipeline," *Financial Post* (July 22, 2020) online: <https://financialpost.com/commodities/energy/insurance-company-zurich-drops-coverage-for-trans-mountain-oil-pipeline>.

³ Sven Biggs, "URGENT: Insuring the Trans Mountain Pipeline," *Stand.earth* (May 27, 2020), online: https://www.stand.earth/sites/stand/files/insuring_the_trans_mountain_pipeline_-_liberty_mutual.pdf.

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.

Trans Mountain has already observed increasing reluctance from insurance companies to offer insurance coverage for the Pipeline and to do so at a reasonable price. For instance, in 2020, Trans Mountain experienced a significant reduction in available insurance capacity. It sought and secured partial replacement policies to compensate for this reduction, but did so at a significantly higher cost.

Under Trans Mountain's Incentive Tolling Settlement, shippers bear the increase in insurance premiums as a flow through cost in the revenue requirement. Further, given the significantly large amount of insurance required to partially fulfill Trans Mountain's \$1 billion financial requirement obligation, a reduction in insurers willing to participate has the potential to limit Trans Mountain's ability to access adequate levels of insurance coverage at reasonable cost.

As such, any further impacts to Trans Mountain's ability to maintain adequate coverage and to do so at competitive prices as a result of public disclosure of the Confidential Information will cause material prejudice to Trans Mountain and its shippers.

Disclosure of the Confidential Information could also reasonably be expected to prejudice the competitive position of Trans Mountain's insurers. If the name of Trans Mountain's insurers is disclosed publicly, it could reasonably be expected that insurers named in the certificate of insurance will be targeted and pressured, as they have been recently. Such targeting and pressure has included letters and petitions to Trans Mountain's insurers stating that insuring Trans Mountain's assets and similar pipelines will pose "significant reputational risks" and "undermine the continued viability" of their businesses.⁴

Trans Mountain therefore submits it has met the test established by section 60(a) of the CER Act with respect to the Confidential Information and that the relief sought herein is warranted.

Application of Section 60(b) of the CER Act

The Confidential Information, which reveals parties to a commercial contract, is commercial in nature. The potential impacts of public disclosure discussed above include negative financial and competitive impacts. Conversely, Trans Mountain is not aware of any prejudice to a third party arising from the redaction of the limited Confidential Information from its CER filings.

While the name of Trans Mountain's insurers was not always treated confidentially in regulatory filings, current and increasing pressures on insurers to avoid insuring pipeline assets such as Trans Mountain's Pipeline and associated implications for Trans Mountain, its shippers and its current and potential insurers have caused Trans Mountain to establish practices to protect the

⁴ Lyle Adriano, "Major petition urges insurers to drop Trans Mountain coverage," Insurance Business Canada (August 6, 2020), online: <https://www.insurancebusinessmag.com/ca/news/environmental/major-petition-urges-insurers-to-drop-trans-mountain-coverage-229967.aspx>;

Valeria Volcovici, "Insurers Pressed to Drop Coverage of Canada's Oil Sands Pipeline," Insurance Journal (August 8, 2019), online: <https://www.insurancejournal.com/news/international/2019/08/08/535239.htm>.

Confidential Information from disclosure to the general public going forward. As such, the Confidential Information is and will be consistently treated as sensitive and confidential by Trans Mountain.⁵

The same type of information as the Confidential Information was previously held by the Commission's predecessor to be confidential in a July 3, 2019 decision ([C00254-1](#)). In that case, Genesis Pipeline Canada Ltd. ([A98873-1](#)) and NOVA Chemicals (Canada) Ltd. ([A98875-1](#)) requested that the names of the insurers specific to each policy be treated confidentially in all future filings of their certificates of insurance – the same relief sought herein. The National Energy Board ("Board") found that this information met the test for confidentiality set out in section 16.1(b) of the *National Energy Board Act* (the predecessor to section 60(b) of the CER Act). The Board concluded as follows:

In reaching this determination, the Board finds that the commercial details provided have been consistently treated as confidential. The Board also took into consideration that Genesis and NCCL provided redacted versions of the certificates of insurance. Overall the Board has determined the interest of Genesis and NCCL in confidentiality outweighs the public interest in disclosure.

The Board thus accepted the unredacted certificates of insurance as confidential and confirmed it would not place the redacted information on the record or otherwise make it available to the public.

Trans Mountain submits that, consistent with this precedent, Trans Mountain's interest in maintaining the confidentiality of the Confidential Information outweighs the public interest in disclosure and, therefore, the relief sought herein is warranted pursuant to section 60(b) of the CER Act.

Future Filings

The relief sought herein is warranted for all future filings of Trans Mountain's certificate of insurance. As noted above, the certificate of insurance must be filed annually as part of the update to Trans Mountain's Financial Resources Plan. The need for confidential treatment of the names of Trans Mountain's insurers as set out above is very unlikely to change in the future, and it would be an inefficient use of Trans Mountain and CER resources to require Trans Mountain to reapply for confidential treatment every year.

Proposed Approach for Filing Redacted Information

Should the Commission grant the relief sought herein and in accordance with section 1.5 of Chapter 1 of the CER Filing Manual, as modified by the CER's notice of *Important changes to filing regulatory documents*, posted on the CER website on March 17, 2020:⁶

- (a) a redacted version of Trans Mountain's certificate of insurance that does not contain the Confidential Information will be filed publicly on the CER's Registry; and

⁵ These practices are subject to Trans Mountain's contractual and regulatory requirements to disclose the Confidential Information to specific third parties.

⁶ Online: <https://www.cer-rec.gc.ca/bts/nws/whtnw/2020/2020-03-17-2-eng.html>.

- (b) concurrent with the public filing of the redacted certificate of insurance, Trans Mountain will deliver an unredacted copy that shows the Confidential Information to the Secretary of the Commission via secure and confidential email.

Enclosed with this letter request is a letter of support from the Canadian Association of Petroleum Producers (CAPP) whose members are shippers on the Trans Mountain system.

Should you have any questions regarding the above, please contact the undersigned.

Sincerely,

TRANS MOUNTAIN CANADA INC.

Original signed by

Kevin Thrasher
Associate General Counsel
Trans Mountain Canada Inc.

Enclosure