



Insurance request is about the integrity of the public process and the civility of political debate

March 22, 2021

Mr. Jean-Denis Charlebois
Secretary of the Commission
Canada Energy Regulator
Unit 210 - 517 – 10th Ave SW
Calgary, AB

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

Dear Mr. Charlebois:

The Resource Works Society is a non-profit public-interest research group working to advance a respectful and fact-based dialogue on responsible resource development in British Columbia and Canada. Founded in 2014, Resource Works supports responsible natural resource activity that benefits communities.

In accord with our mandate, we write to indicate our support for Trans Mountain’s request for confidentiality regarding the identity of its insurers.

Nine years ago this February, Kinder Morgan Canada proposed to expand its Trans Mountain pipeline to the west coast. After nearly a decade of good-faith consultation, study and review, the Project passed every democratic and judicial hurdle before it. Through years of consultation and review, it was twice reviewed and recommended by the National Energy Board (NEB), now the Canada Energy Regulator (CER) – [first in 2016](#) and then in [2019 with expanded study](#) and

additional conditions, bringing the total conditions to 173. Twice, it was approved by the federal cabinet. Finally, on June 18, 2019 the Government of Canada approved the Trans Mountain Expansion Project (TMX or the Project). The Project is subject to 156 conditions enforced by the CER. The Project won two challenges before the Federal Court of Appeal and three before the Supreme Court of Canada, regarding everything from the federal government's jurisdictional authority to the reasonability of its approval of the Project.

The public square is an appropriate place to debate the merits of a government-regulated infrastructure project. In a healthy liberal-democratic system, the ultimate approval of such projects must rest with the democratically elected government and with the judiciary. After almost ten years of consultation, study, review, and scrutiny, TMX has received that approval. It won the assent of the federal government under whose jurisdiction it falls — not once, but twice. With improved consultation and environmental review, Trans Mountain and the energy regulator satisfied the courts at the highest levels.

Contrary to the claims of some TMX opponents, in fact the Project has received [substantial support from First Nations](#). As the Federal Court of Appeal wrote:

"Significantly, the consultation process initiated by Canada invited the participation of 129 Indigenous groups potentially impacted by the Project and, in the end, more than 120 either support it or do not oppose it. As well, benefit agreements had been signed with 43 Indigenous groups as of June 22, 2019. The Governor in Council was entitled under section 54 to take this broad consensus into account in concluding that the Project was in the public interest."

With a strong business case, the full support of the relevant elected government, and decisions of the Supreme Court of Canada, the operation of this pipeline should be a foregone conclusion.

But certain pressure groups continue to fight the Project not within the democratic or judicial process but through a strategy of attempting to make this publicly owned Project financially unfeasible. To do so, as the evidence presented in the accompanying Backgrounder compellingly shows, they are intimidating and harassing the insurance companies that do business with the federally owned pipeline company, and their employees. This is plain to see, including in the statements of the anti-TMX campaigners themselves who have submitted to this process. Turning down the Project's request for confidentiality would make it easier to conduct harassment campaigns while providing no benefit to Canadians.

In ordinary circumstances, Resource Works would support the disclosure of this information. But this is not business as usual. Insurer information is not being used to enhance public dialogue. Rather, it provides a method to weaponize misinformation and reduce debate to harassment and intimidation, while at the same time moving in the wrong direction on Canada's climate commitments.

By approving Trans Mountain's request of confidentiality, the CER would be acting in the public's financial interest and in its wider interest in the integrity of the public process and the civility of political debate.

For these reasons, we encourage the CER to approve Trans Mountain's request for confidentiality immediately.

Resource Works is pleased to contribute to this important conversation and thanks the Canadian Energy Regulator for the opportunity.

Sincerely,

A handwritten signature in black ink, appearing to read 'Stewart Muir', with a stylized flourish at the end.

Stewart Muir

Executive Director

Resource Works Society

stewart@resourceworks.com



Backgrounder

March 22, 2021

In July 2020, the insurance company Zurich dropped their coverage of TMX. As of August 2020, a coalition of 140 pressure groups representing 24 million members, mostly outside Canada, signed an open letter to the remaining insurers of Trans Mountain [demanding they drop coverage](#).

On May 27, 2020, an organization named Stand.earth issued a demand letter to Liberty Mutual that read: “[TMX’s] certificate indicates that Liberty Mutual is currently an insurer of the pipeline and is therefore [on our list of potential targets](#). However, if you publicly indicate that you plan to drop your policy on the pipeline when it comes up for renewal this August, we will take you off that list.”

The threat from the organization, which lists offices in Bellingham WA, San Francisco CA and Vancouver BC, continues: “If we do not receive a response from you by June 17th, we will assume that your company is planning on renewing insurance for this destructive project, and we will have no choice but [to target your company](#) as part of our campaign.”

It’s notable that [three of the eight insurers](#) who ignored this letter were then targeted with intimidating and harassing activities by a second group with which Stand.earth aligns on this campaign. In February 2021, individuals representing themselves as being from that second group targeted Liberty Mutual Insurance Co. at 999 West Hastings St. in Vancouver, as well as Chubb Insurance on 250 Howe St. and the AIG office on Burrard Street. Vancouver Police Department spokesperson Sergeant Steve Addison said the protesters attempted to block access to buildings and egress “by occupying the lobbies and by [tying the front doors shut](#)... During Friday’s protest, the demonstrators set up a tent and used their bodies to barricade the front doors of a building on Burrard Street, refusing to let anyone enter or exit.”

Protesters refused to engage with police, and Sgt. Addison said, “Several protesters became physically and verbally confrontational with police.”

On Friday the 19th of February, the same demonstrators targeted AIG’s Vancouver office, again blocking the entrance and forcibly preventing people from entering or leaving. CTV reports:

“VPD spokesperson Const. Tania Visintin wrote in an email that management had asked police to clear the area from the private building, and cited multiple [concerns about personal safety from occupants](#) while trying to leave and enter the building. ‘A few protesters were aggressive and physical with police and damaged a glass sign in the building. Officers were called from across the city to assist,’ Visintin said. Four people were arrested for mischief and obstructing a police officer, according to Visintin. Police said they tried to speak with protesters but that they were ‘unwilling to engage in dialogue.’”

[Days later](#), Trans Mountain asked the CER to keep the identity of the company’s insurers confidential because the result of such targeted environmental activism in recent years is that it can be challenging to obtain and maintain reasonably priced insurance.

According to the [Insurance Business Magazine](#), “Pressure has already caused insurance giants Talanx and Zurich to pull back from the Project.” [BOE Report](#) adds that “‘Certain parties’ are using filings in [CER’s] database to identify insurers and pressure them,” and that Trans Mountain said it “Experienced a significant reduction in available insurance capacity in 2020 and, when it found partial replacement policies, it had to pay a significantly higher cost.”

In [its submission](#) to the CER, one organization argues that insurers are cancelling their coverage of TMX not due to pressure from outside organizations but because of changing values within their own companies. The argument is that the insurers’ identity should remain public because it is not the publication of the identities that is causing financial harm, but changing attitudes to climate change itself.

This is highly disingenuous. The boycott promoter itself writes that the intention of its campaign targeting TMX’s insurers is to [keep “the pressure on Trans Mountain’s existing insurers](#) to drop the pipeline.” It is clear that the intention of such campaigns is not to reflect changing mores in the insurance industry but rather to selectively exert financial pressure, directly or indirectly, in order to influence the policies of Trans Mountain insurers.

Recent trends toward improved ESG (environmental, social, and governance) practice have resulted in the United Nations Environment Programme Finance Initiative's Principles for Sustainable Insurance (PSI) adopting four elements of a global framework for insurers, including dialogue with business and industry associations to better understand and manage ESG issues across industries and geographies. (Denying insurance coverage is not listed in these principles.)

The Insurance Institute of Canada's 2020 report [*Climate Risks Implications for the Insurance Industry in Canada*](#) states that society is transitioning to a low-carbon economy driven by market dynamics, technological innovation, policy action, and shifting consumer preferences. Nowhere in its report does the IIC discuss a move away from insuring fossil fuel projects.

It is in this evolving, climate-sensitive context that insurers continue to provide insurance for innumerable fossil fuel projects all around the world. European insurance firms who recently terminated their dealings with the near-complete Russian Nord Stream 2 pipeline did so because of demands from the U.S. government for geopolitical reasons, not because enlightened insurance executives are swearing off fossil fuels as a category (which they aren't). No evidence has been brought forward to show that Saudi Arabian oil projects, for example, are facing insurance woes. The Trans Mountain Project is located in Canada, where an open society ensures strong legal protections for the expression of diverse views. If the CER decides to waive what is a generally accepted principle of commercial confidentiality by granting access to insurers' identity, the only winner will be these consumer boycott campaigns singling out Canada and eroding the Canadian national interest.

Trans Mountain's stated position is amply justified under section 60 of the *Canadian Energy Regulator Act*, which stipulates that a party may request that the CER treat information in the CER filings as confidential if the 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. The *Act* also protects information that is financial, commercial, scientific, or technical in nature, is confidential, has been consistently treated as confidential by the person directly affected by the proceedings, and the person's interest in confidentiality outweighs the public interest in disclosure.

It is obvious that a disclosure of the identity of Trans Mountain's insurers could result in material loss to Trans Mountain by threatening the competitive position of its insurers resulting in those insurers withdrawing cover so that Trans Mountain is forced to seek more expensive insurance.

Companies including Talanx and Zurich dropped insurance for TMX, causing financial loss to Trans Mountain. Chubb, AIG, and Liberty Mutual suffered disruption and property damage. It is no logical leap to believe that public pressure and intimidation campaigns underway against Trans Mountain's insurers were designed to cause harm to insurers, and may in fact have accomplished this. As Trans Mountain wrote in its [confidentiality request to the CER](#):

“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'.”

Regarding the additional requirements of section 60 of the CER Act, the identity of insurers is undoubtedly commercial information in nature. Trans Mountain says it consistently treated the identity of its insurers as confidential. Not disclosing these particulars would in no way limit the CER's ability to satisfy its statutory obligations.

As Trans Mountain noted in its submission, there is a precedent already set in the confidentiality CER granted to the insurers of Genesis Pipeline Canada and Nova Chemicals on July 3, 2019.

The primary purpose of Canada's energy regulator is set out in the *Canadian Energy Regulator Act* of 2019 as:

“To ensure that pipelines and power lines as well as facilities, equipment or systems related to offshore renewable energy projects, are constructed, operated and abandoned in a manner that is safe, secure and efficient and that protects people, property and the environment...”

The *Pipeline Safety Act* introduced absolute liability to pipeline companies, setting out for pipeline companies with the capacity to transport greater than 250,000 barrels of oil per day (major oil pipeline companies), the absolute liability level of \$1 billion. Companies are required to demonstrate that they are meeting this requirement. They can apply to treat a portion or all of their Financial Resources Plan confidentially, to be assessed on a case-by-case basis.

[The National Energy Board stated](#) in approving TMX that the Project “is in Canada's national interest.” Nowhere does the *Canadian Energy Regulator Act* state that the CER's mandate is to provide opaque, unaccountable advocacy organizations with tenuous connection to Canada with the tools to defeat the safe, secure, and efficient operation of energy infrastructure deemed

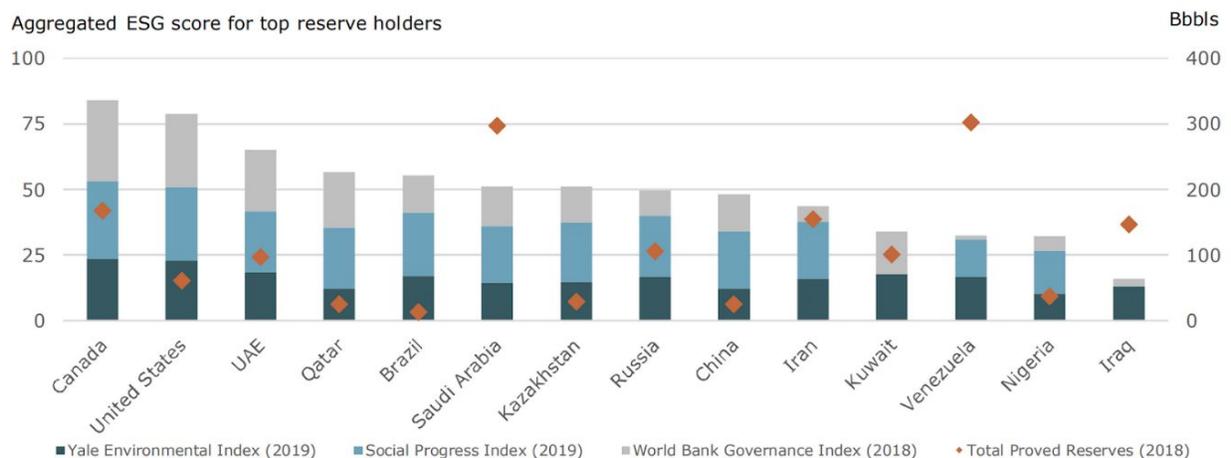
to be in the national interest. Indeed, denial of insurance would accomplish the very opposite by, in the event of an extreme outcome, the increased use of statistically less safe alternative methods of transportation.

Trans Mountain pipeline functions to move Alberta oil to its shippers' customers; the company's expansion project (TMX) will allow oil sands products to reach international markets. If the endgame of the insurance-withdrawal campaigns is achieved, and Canadian oil is then less present in global markets, this will be to the direct advantage of the world's other top oil reserve nations *all of which fall below the standard of ESG performance set today by Canada*.

The chart below illustrates why this is the case. Canada's high ESG performance flows from its environmental, social, and governance metrics as a whole. Research from organizations including the Yale Environmental Performance Index and the World Bank bears out the claim. Minimizing emissions is recognized by the Canadian oil industry as an urgent priority, and companies are showing credible progress in this direction. In addition, carbon-reducing technologies that are matched to Canada's upstream capabilities – including carbon capture and low-carbon hydrogen – will be further accelerated because of the Canadian government's stated commitment to invest TMX earnings in meeting environmental goals.

Insurers pressured to harm top-performing country

Insurance companies are being pressured to deny insurance to Canada's Trans Mountain pipeline. This is despite the fact that Canada overall has the highest Environment, Society and Governance scores out of all the major oil reserve nations. CER would do well to ask: how are regulators in lesser-performing nations reacting to insurance threats? Or, are pressure groups even bothering to conduct their campaigns where low ESG rankings denote the absence of civil society influence?



Sources: ESG Scores – aggregation using an equal weighting (1/3) for each of Yale Environmental Performance Index, Social Progress Index and World Bank Governance Index. Reserves - BP Statistical Review of World Energy 2019 based on government and published data. From Cenovus presentation, 2020.

The International Energy Agency states in its publication [Oil 2021: Analysis and forecast to 2026](#): “It is crucial to invest in the upstream sector even during rapid transitions in which it would still take years to shift global transport fleets away from internal combustion engines to electric vehicles and other low-carbon alternatives. Some sectors – such as aviation, shipping and petrochemicals – will continue to rely on oil for some time.”

Oil isn’t going away. To provide encouragement to publicity campaigns that have the result of lowering the global supply of high-ESG oil, such as that from Canada, is plainly a step in the wrong direction.

Nor is there any national purpose to be served by encouraging actions that increase taxpayer burdens during the pandemic recovery, while concomitantly benefiting sellers of low-ESG oil from other oil-producing countries. If some insurance companies wish to risk adding to global climate harm by enabling lower-ESG countries than Canada to more effectively gain market share, that is a decision they are free to make and own the consequences of. It would extend far beyond the legislated remit of the CER for the regulator to volunteer itself as an enabler of that outcome.

Trans Mountain’s interest in confidentiality outweighs interest groups’ advocacy for disclosure. The general public has no reason to be interested in the identity of TMX’s insurers. The primary requesters of access to this commercial information have but one reason for doing so, that being to enable the manufacture of pressure against insurers. Insurance firms’ Canadian employees face aggressive occupations of office buildings that require police intervention. These employees do not deserve exposure to traumatic workplace conditions. Members of the public caught up in these actions should not have to plan their lives in fear of violent protests while simply going about their business.

Knowingly enabling the targeting of insurers of TMX is not to act in the public interest nor in the spirit of accountability, transparency, useful climate action, or other inclusive values. Rather, it is in the interest of narrow and misinformed frustrators and manipulators of democratic, judicial, and regulatory systems, whose evident strategy is to, in turn, exploit and deplete the public outrage potential of each project-delay tactic before moving on to the next one.

Vocal opponents of TMX have been able to exercise their freedoms for years. Over nearly a decade, they have had countless opportunities to engage in consultation and to take Trans Mountain to court. They have had ample opportunity to mobilize their supporters in the

democratic process to support a political party other than that which holds power federally. But the governing party was re-elected in the last federal election, and it stands by its approval of the Project. Eighty one per cent of Canadian MPs represent parties that support the project. In 2019, these parties secured the votes of 12.2 million Canadians. The Supreme Court has also ruled in favour of the federal cabinet's decision.

The matter has been settled and those who wish otherwise must nonetheless accept that.

The Canadian public is rightly concerned about the cost escalation of the Trans Mountain Expansion Project. Insurance problems will obviously add to Project costs. The Canadian Energy Regulator is furnished with all necessary powers to ensure Trans Mountain is as safe as it can be. Granting the company its request will not impair this.