

**VIA ELECTRONIC SUBMISSION**

March 25, 2021

Canada Energy Regulator  
Suite 210, 517 – 10<sup>th</sup> 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”)  
Request for Confidential Treatment  
Amended Order AO-001-FRO-002-2017 (“Amended Order”)  
Reply to Public Comments**

On March 8, 2021, the Commission established a process to solicit comments on Trans Mountain’s request for the confidential treatment of the name(s) of its insurer(s) in future filings of its certificates of insurance (“Request”). The Commission invited comments from the public until March 22, 2021 and required Trans Mountain to file its reply comments by March 25, 2021.<sup>1</sup>

This letter provides Trans Mountain’s reply to the comments filed with the Canada Energy Regulator (“CER”) regarding the Request.

**Background**

In its Request, Trans Mountain sought relief under section 60 of the *Canadian Energy Regulator Act* (“CER Act”). Pursuant to section 60(a), Trans Mountain submitted that disclosure of the name(s) of its insurer(s) could be reasonably expected to result in a material loss to Trans Mountain and its shippers and prejudice the competitive position of its insurers. Pursuant to section 60(b), Trans Mountain submitted that the name of its insurers is commercial in nature, is consistently treated as confidential by Trans Mountain and Trans Mountain’s interest in confidentiality outweighs the public interest in disclosure.<sup>2</sup>

By March 22, 2021, a total of 27 letters were filed with the CER, 11 in support of the Request and 16 opposed. Of note, a large number of stakeholders are represented by the letters filed in support of the Request, including members of the Independent Contractors and Businesses Association of British Columbia,<sup>3</sup> Canadian Energy Pipeline Association,<sup>4</sup> Business Council of British

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<sup>1</sup> Commission, Letter inviting Comments on the Request (March 8, 2021) ([A7R7T3](#)).

<sup>2</sup> Trans Mountain, Request to Treat Certificate of Insurance Information Confidentially (February 22, 2021) ([A7R4F6](#)), p 2.

<sup>3</sup> Independent Contractors and Businesses Association, Letter to support Request (March 15, 2021) ([A7R9K5](#)).

<sup>4</sup> Canadian Energy Pipeline Association, Letter supporting Request (March 22, 2021) ([A7S1I9](#)).

Columbia<sup>5</sup> and Canadian, Albertan and British Columbian Chambers of Commerce.<sup>6</sup> The Request is also supported by the Government of Alberta for the reasons provided by Alberta Energy Minister Sonya Savage.<sup>7</sup> The supportive comments filed pursuant to the Commission's process are in addition to the letter submitted with the Request from the Canadian Association of Petroleum Producers,<sup>8</sup> which provided clear support for the relief sought in the Request on behalf of shippers on the Trans Mountain Pipeline ("Pipeline"). One of the shippers, Suncor Energy Marketing Inc., also independently filed a letter in support of the Request.<sup>9</sup>

Trans Mountain has reviewed and agrees with the submissions and information filed by commenters in support of the Request, which the Commission stated it will consider in ruling on the Request.<sup>10</sup> Trans Mountain will not repeat those submissions here.

The comments opposing Trans Mountain's request for confidential treatment fail to address the test for confidentiality under the CER Act and raise issues and/or allege facts (including erroneous statements) that are not relevant to this test and Trans Mountain's Request. Trans Mountain's reply is limited to those issues and allegations that are relevant to the matter presently before the Commission. Trans Mountain also continues to rely on the contents of the Request, which address some of the matters raised by opposing commenters and will not be repeated here.

As discussed further below and following a review of all comments submitted, Trans Mountain maintains that it has met the test for confidentiality under section 60 of the CER Act with respect to the name(s) of its insurer(s) and respectfully requests that the Commission approve the confidential treatment of this information.

#### Reply to Comments relevant to Section 60(a) of the CER Act

##### *Elements of the Test*

Some of the opposing comments reflect a fundamental misapprehension of the test established by section 60(a) of the CER Act. For example, Tsleil-Waututh Nation ("TWN") submits that Trans Mountain should be required to provide evidence "of harm and causation" and that disclosure of the insurers' name(s) is "the sole or primary cause of the alleged increases" in Trans Mountain's insurance costs.<sup>11</sup> Robyn Allan ("Ms. Allan") similarly states that Trans Mountain should be required to provide affidavit evidence to prove that disclosure of the insurers' name(s) is the reason why insurers are withholding coverage and raising rates for Trans Mountain, and suggests that the requested relief should not be granted because disclosure of this information is not the "only factor" affecting Trans Mountain's access to insurance and the quantum of its premiums.<sup>12</sup>

Under section 60(a) of the CER Act, 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:

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<sup>5</sup> Business Council of British Columbia, Letter in support of Request (March 19, 2021) ([A7S1F3](#)).

<sup>6</sup> Canadian Chamber of Commerce, Letter in support of Request (March 22, 2021) ([A7S1H9](#)).

<sup>7</sup> Alberta Department of Energy, Letter in support of Request (March 17, 2021) ([A7S1Y9](#)).

<sup>8</sup> Canadian Association of Petroleum Producers, Letter supporting Request (February 22, 2021) ([A7R4F7](#)).

<sup>9</sup> Suncor Energy Marketing Inc., Letter in support of Request (March 22, 2021) ([A7S1I7](#)).

<sup>10</sup> Commission, Letter inviting Comments on the Request (March 8, 2021) ([A7R7T3](#)), p 2.

<sup>11</sup> TWN, Response to Request (March 19, 2021) ([A7S1E4](#)), p 2.

<sup>12</sup> Ms. Allan, Letter responding to Request (February 28, 2021) ([A7R5K3](#)), p 2.

- (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;<sup>13</sup>

The test for confidentiality under section 60(a) does not require proof of actual harm, contrary to the submissions of TWN and Ms. Allan. Rather, section 60(a) clearly states that information may be treated confidentially if its disclosure "could reasonably be expected" to result in a material loss or prejudice a person's competitive position. In other words, the test requires the applicant establish the reasonable *potential* for harm – a much lower threshold than proof of actual or likely harm. This test is also prospective in nature, meaning that, contrary to the assertions of some commenters, evidence of past or present harm is also not required. Rather, a request for confidential treatment of information that must be filed with the CER and that has not yet been filed is premised on potential harm that may occur as a result of disclosure of the confidential information *in the future*. The test under section 60(a) is thus necessarily forward-looking. As stated by the Supreme Court of Canada in relation to a similar test under access to information legislation:

A balance must be struck between the important goals of disclosure and avoiding harm to third parties resulting from disclosure. The important objective of access to information would be thwarted by a mere possibility of harm standard. Exemption from disclosure should not be granted on the basis of fear of harm that is fanciful, imaginary or contrived. ... On the other hand, what is at issue is risk of future harm that depends on how future uncertain events unfold. Thus, requiring a third party (or, in other provisions, the government) to prove that harm is more likely than not to occur would impose in many cases an impossible standard of proof.

...

To conclude, the accepted formulation of "reasonable expectation of probable harm" captures the need to demonstrate that disclosure will result in a risk of harm that is well beyond the merely possible or speculative, but also that it need not be proved on the balance of probabilities that disclosure will in fact result in such harm.<sup>14</sup>

The test for confidentiality in section 60(a) also does not require proof that the disclosure of the information is or will be the sole or primary cause of the anticipated harm. Section 60(a) clearly states that information may be treated confidentially if its disclosure could reasonably be expected to result in "a material loss". In other words, the test is met if disclosure of the name(s) of Trans Mountain's insurer(s) can reasonably be expected to result in a material loss to Trans Mountain through, for example, increased insurance costs, regardless of whether other events or factors may also prejudice Trans Mountain.

There is also no basis for the assertion that Trans Mountain must provide affidavit evidence in order to be granted the requested relief under section 60 of the CER Act, contrary to the submission by Ms. Allan. No such requirement is imposed by the CER Act or otherwise by the Commission. Indeed, the same relief was previously granted in respect of the same type of information (i.e., the names of insurers in a certificate of insurance filing) without any affidavit evidence having been filed.<sup>15</sup> Trans Mountain submits that the evidentiary record before the

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<sup>13</sup> CER Act, s 60(a) [emphasis added].

<sup>14</sup> *Merck Frosst Canada Ltd. v Canada (Health)*, 2012 SCC 3 at paras 204, 206.

<sup>15</sup> National Energy Board, Letter granting Confidential Treatment of Insurers' Names (July 3, 2019) ([A6V7D6](#)); Genesis Pipeline Company Ltd., Request for Confidential Filing (April 16, 2019) ([A6T5Q0](#)); Nova Chemicals (Canada) Ltd., Request for Confidential Filing (April 16, 2019) ([A6T5Q8](#)).

Commission – including comments from opposing parties that seek to cause the very harm Trans Mountain submits can reasonably be expected to occur – is sufficient to meet the test for confidentiality in this case.

#### *Prejudice to the Competitive Position of Trans Mountain's Insurers*

Trans Mountain notes that none of the public comments take issue with Trans Mountain's submission that disclosure of the name(s) of its insurer(s) could be reasonably expected to prejudice their competitive position, and some of the public comments lend credence to this submission.

In its request for confidential treatment, Trans Mountain submitted that it could reasonably be expected that insurer(s) named in its certificate of insurance will be targeted and pressured if their names are disclosed, as they have been recently, which would prejudice their competitive position.<sup>16</sup> The public comments from Stand.Earth lend credence to this submission by stating that it: (i) began planning a public campaign to pressure Trans Mountain's insurers to stop offering insurance coverage for the Pipeline knowing that Trans Mountain's certificate of insurance (with its insurers' names) was on the public record; and (ii) will continue this public campaign.<sup>17</sup> While Stand.Earth states that it will continue this pressure campaign even if Trans Mountain's request for confidentiality is granted, it will not know Trans Mountain's insurers in that case.<sup>18</sup> Similarly, the letter of comment filed by Matthew Vollrath and duplicated by others as part of the Climate Action Now campaign confirms that, in their view, members of the public should be able to identify insurers of pipelines that they "deem to be destructive" and should be able to pressure those insurance companies to "clean up their act."<sup>19</sup> The backgrounder filed by the Resource Works Society provides further details regarding the pressure such groups have recently placed on Trans Mountain's insurers.<sup>20</sup>

If Trans Mountain's request is not granted and the name(s) of its insurer(s) are publicly disclosed, Stand.Earth and others are likely to target and publicly pressure Trans Mountain's insurers, which could reasonably be expected to prejudice their competitive position. For this reason, confidential treatment of the name(s) of Trans Mountain's insurer(s) is justified under section 60(a) of the CER Act.

#### *Material Loss to Trans Mountain and its Shippers*

Some of the public comments suggest that any loss to Trans Mountain (and thus its shippers) from increased insurance costs is the result of factors other than public pressure applied against Pipeline insurers, such as Pipeline incidents, construction of the Trans Mountain Expansion Project ("TMEP"), Trans Mountain's ownership structure, insurance industry trends, climate change and "stranded assets in the tar sands".<sup>21</sup> These and other similar statements are

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<sup>16</sup> Trans Mountain, Request to Treat Certificate of Insurance Information Confidentially (February 22, 2021) ([A7R4F6](#)), p 3.

<sup>17</sup> Stand.Earth, Response to Request (March 4, 2021) ([A7R7C2](#)), p 4.

<sup>18</sup> This is acknowledged by TWN in its public comment: TWN, Response to Request (March 19, 2021) ([A7S1E4](#)), p 4.

<sup>19</sup> Matthew Vollrath, Public Comment on Request (March 12, 2021) ([A7R9I8](#)); Joanna Vollrath, Public Comment on Request (March 15, 2021) ([A7R9J5](#)); Christopher Gaynor, Public Comment on Request (March 15, 2021) ([A7R9K3](#)); Cooper Walter, Public Comment on Request (March 15, 2021) ([A7R9K7](#)); Patrick O'Sullivan, Public Comment on Request (March 15, 2021) ([A7R9V3](#)); Amy Weber, Public Comment on Request (March 19, 2021) ([A7S1D4](#)).

<sup>20</sup> Resource Works Society, Letter in support of Request (March 22, 2021) ([A7S1J1](#)), p 4-10.

<sup>21</sup> See, e.g., comments filed by Ms. Allan (February 28, 2021) ([A7R5K3](#)), p 2-3; TWN (March 19, 2021) ([A7S1E4](#)), p 2-3; Stand.Earth (March 4, 2021) ([A7R7C2](#)), p 2, 4-5; Elizabeth May MP (March 8, 2021) ([A7R8G3](#)), p 2; David

irrelevant, not supported by evidence, and in many cases factually incorrect. To the extent any such factors have or will influence Pipeline insurance coverage options or costs, there is no support for the view that such factors preclude other activities – such as targeted protestor actions – from causing material losses to Trans Mountain and its shippers. Rather, Trans Mountain submits that disclosure of the confidential information in question serves only to exacerbate potential challenges in obtaining adequate insurance coverage for the Pipeline on reasonable terms.

As noted above, section 60(a) of the CER Act does not require proof that disclosure of the name(s) of Trans Mountain's insurer(s) is the sole cause of potential harm, but rather that it can reasonably be expected to result in material loss. The opposing commenters have thus failed to effectively refute (and in some cases, do not deny) the grounds relied upon by Trans Mountain in its Request under section 60(a) of the CER Act, including:

- (i) insurance companies have faced targeted pressure for insuring the Pipeline;<sup>22</sup>
- (ii) certain parties have been using public filings on the CER's database to identify insurers in order to individually and publicly pressure them to drop their policy for the Pipeline;
- (iii) certain parties will continue to pressure Trans Mountain's insurers to terminate insurance coverage for the Pipeline if the identities of the insurance providers are disclosed,<sup>23</sup> and
- (iv) if the name(s) of Trans Mountain's insurer(s) are publicly disclosed, it can reasonably be expected that Trans Mountain and its shippers will suffer a material loss in the form of higher insurance premiums (due to a smaller pool of insurers available to Trans Mountain) and challenges in maintaining adequate insurance coverage to fulfil its significant financial resource obligations under section 138 of the CER Act.

Finally, it must be assumed that at least some of the commenters opposed to Trans Mountain's Request believe that placing pressure on Trans Mountain's insurers can "reasonably be expected to result in a material loss" to Trans Mountain. As discussed above, certain commenters that oppose Trans Mountain's operations indicate that they will continue to exert pressure on insurance companies to drop policies for the Pipeline.<sup>24</sup> These commenters clearly believe that such pressure can "reasonably be expected to result in a material loss" to Trans Mountain, as Pipeline owner, and its shippers. Indeed, causing such loss appears to be their primary objective. On those facts alone, Trans Mountain submits that those commenters have conceded that Trans Mountain has satisfied the test under section 60(a) of the CER Act.

#### Reply to Comments relevant to Section 60(b) of the CER Act

##### *Elements of the Test*

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Huntley (March 21, 2021) ([A7S1H3](#)), p 1; Lana Shymanski (March 21, 2021) ([A7S1L4](#)), p 1; and Peter Julian MP (March 22, 2021) ([A7S1I1](#)), p 1.

<sup>22</sup> This ground is supported by comments from Davis and Rhonda Costas-Mirza (March 16, 2021) ([A7R9U4](#)), p 1.

<sup>23</sup> This ground is supported by comments from opposing parties, such as: Stand.Earth (March 4, 2021) ([A7R7C2](#)), p 4; and letters of comment listed in footnote 19 that were filed as part of the Climate Action Now campaign.

<sup>24</sup> Stand.Earth, Response to Request (March 4, 2021) ([A7R7C2](#)), p 1, 4; TWN, Response to Request (March 19, 2021) ([A7S1E4](#)), p 3-4; and letters of comment listed in footnote 19 that were filed as part of the Climate Action Now campaign.

Under section 60(b) of the CER Act, 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:

- (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;

Trans Mountain notes that none of the public comments take issue with Trans Mountain's submission in its Request that the name(s) of its insurer(s) constitutes information that is commercial in nature and that it is and will be consistently treated as confidential by Trans Mountain.<sup>25</sup> In other words, there appears to be no dispute that the requirements under paragraph 60(b)(i) have been satisfied. Rather, the comments relate only to paragraph 60(b)(ii) regarding the public interest in confidentiality relative to disclosure.

#### *The Public Interest in Disclosure*

The opposing comments suggest that the public interest favours disclosure of the name(s) of Trans Mountain's insurer(s) on the grounds that: (i) confidentiality will erode the public's trust in the CER;<sup>26</sup> (ii) the request for confidentiality is an attempt by Trans Mountain to avoid transparency and accountability;<sup>27</sup> (iii) as a publicly owned company, Trans Mountain should face the highest levels of public scrutiny and transparency;<sup>28</sup> and (iv) the freedom for individuals to publicly express concerns will be affected.<sup>29</sup> Trans Mountain will reply to each of these grounds in turn.

There is no principled basis to accept the submissions that granting the requested confidential treatment will erode the public's trust in the CER. Section 60 of the CER Act – as enacted by Parliament – provides an exception to the general principle that the Commission's proceedings should be public. Where one or more of the tests for confidential treatment of information has been sufficiently met, confidential treatment may be granted. This is how the test has been consistently applied by the Commission and its predecessor,<sup>30</sup> including in respect of the names

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<sup>25</sup> Trans Mountain, Request to Treat Certificate of Insurance Information Confidentially (February 22, 2021) ([A7R4F6](#)), p 3-4.

<sup>26</sup> Ms. Allan, Letter responding to Request (February 28, 2021) ([A7R5K3](#)), p 1; TWN, Response to Request (March 19, 2021) ([A7S1E4](#)), p 2; and Stand.Earth, Response to Request (March 4, 2021) ([A7R7C2](#)), p 3, 5.

<sup>27</sup> Ms. Allan, Letter responding to Request (February 28, 2021) ([A7R5K3](#)), p 1, 3; TWN, Response to Request (March 19, 2021) ([A7S1E4](#)), p 2; Stand.Earth, Response to Request (March 4, 2021) ([A7R7C2](#)), p 3, 5; Elizabeth May MP, Letter responding to Request (March 8, 2021) ([A7R8G3](#)), p 2; Lana Shymanski, Letter responding to Request (March 21, 2021) ([A7S1L4](#)), p 1; Peter Julian MP, Letter responding to Request (March 22, 2021) ([A7S1I1](#)), p 1.

<sup>28</sup> Stand.Earth, Response to Request (March 4, 2021) ([A7R7C2](#)), p 3; Elizabeth May MP, Letter responding to Request (March 8, 2021) ([A7R8G3](#)), p 2; Davis and Rhonda Costas-Mirza, Letter of Submission on Request (March 16, 2021) ([A7R9U4](#)), p 2; Peter Julian MP, Letter responding to Request (March 22, 2021) ([A7S1I1](#)), p 2.

<sup>29</sup> Ms. Allan, Letter responding to Request (February 28, 2021) ([A7R5K3](#)), p 3; Sarah Worden, Response to Request (March 10, 2021) ([A7R8K8](#)).

<sup>30</sup> See, e.g., Commission, Ruling No. 2 – Request for Confidentiality (July 31, 2020) ([A7H5E1](#)); National Energy Board, Letter granting Application for Confidential Treatment (August 16, 2011) ([A2C2J8](#)); and National Energy Board, Letter granting Application for Confidential Treatment (June 14, 2016) ([A5C6S8](#)).

of pipeline insurers.<sup>31</sup> Commenters suggest that granting the requested confidential treatment will erode the public's trust in the CER as it will be seen "as self dealing by a federal government that acts simultaneously as owner and regulator of the project."<sup>32</sup> This submission ignores the fundamental principle that the Commission is an independent regulator that must apply appropriate scrutiny to Trans Mountain's regulated activities in the same way that it scrutinizes all CER-regulated companies. The fact that the Commission and Trans Mountain are both federal entities cannot, therefore, form a basis for denying the Request.

Nor is the request for confidentiality an attempt by Trans Mountain to avoid transparency and accountability, as some commenters suggest. Trans Mountain remains fully accountable in complying with the condition requirements of the Amended Order and will provide the information as required to the Commission for its review and scrutiny.<sup>33</sup> The redaction of the names of insurance companies from the public version of Trans Mountain's certificates of insurance represents a very limited exception to the overall transparency of the CER's regulatory process and Trans Mountain's filings with the CER. No commenter has demonstrated how the very narrow scope of the relief sought in the Request would limit Trans Mountain's accountability under the Amended Order, or how such a limited redaction would result in a material lack of transparency.

Contrary to some comments, the ownership of Trans Mountain is not relevant to the test for confidential treatment. The CER Act does not contemplate a different test based on the ownership of an applicant company or that a publicly owned applicant has a higher threshold to meet for confidentiality. Trans Mountain is not aware of any precedent or support in law for the position that a different test or higher threshold applies to a publicly owned applicant, whether it be a municipal or provincially owned utility or a Crown corporation. As one of the commenters indicated, there is no requirement for every internal aspect of the business dealings of a publicly owned company to be made available to the public.<sup>34</sup> This is particularly true given that there is an explicit statutory means (section 60 of the CER Act) for information to be kept confidential.

Comments that the relief sought in the Request will interfere with individuals' freedom to publicly express concerns are also unfounded. The requested confidential treatment of the name(s) of Trans Mountain's insurer(s) will not affect individuals' ability to publicly express concerns about the Pipeline or otherwise. Rather, it will affect the ability of certain parties to target and pressure Trans Mountain's insurers to reduce or eliminate coverage of the Pipeline – an operating asset that is subject to significant insurance requirements to protect the public in the event of an incident. There is no public interest served by these targeted campaigns, which (i) are contrary to the purpose of the CER Act to "ensure that pipelines ... are constructed, operated and abandoned in a manner that is safe, secure and efficient and that protects people, property and the environment";<sup>35</sup> (ii) serve to undermine federal approval of the Pipeline in the Canadian public's interest and, therefore, the rule of law;<sup>36</sup> (iii) do not align with the purpose of the regulatory requirement to file certificates of insurance with the CER (which purpose is ostensibly to ensure Trans Mountain has adequate insurance in place);<sup>37</sup> and (iv) seek to effect the very harm that Trans Mountain is seeking to avoid through its Request. Attempts to undermine Trans Mountain's

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<sup>31</sup> National Energy Board, Letter granting Confidential Treatment of Insurers' Names (July 3, 2019) ([A6V7D6](#)).

<sup>32</sup> Stand.Earth, Response to Request (March 4, 2021) ([A7R7C2](#)), p 2.

<sup>33</sup> A complete list of Trans Mountain's compliance filings in relation to the Financial Resources Requirements for CER-regulated pipelines, dating back to 2016, is available [here](#).

<sup>34</sup> Randy Wollms, Letter in Support of Request (March 17, 2021) ([A7S0V1](#)).

<sup>35</sup> CER Act, s 6(a).

<sup>36</sup> See, for example, *Coastal GasLink Pipeline Ltd. v Huson*, 2019 BCSC 2264, para 156.

<sup>37</sup> See, for example, CER, "Financial Requirements," online: <https://www.cer-rec.gc.ca/en/about/acts-regulations/cer-act-regulations-guidance-notes-related-documents/financial-requirements/index.html>.

ability to obtain adequate insurance in satisfaction of its regulatory requirements under the CER Act should not be condoned or facilitated by the Commission.

#### *The Public Interest in Confidentiality*

The very limited and purely conceptual prejudice caused by the relief sought in the Request is outweighed by the public interest in favour of confidentiality. In support of the public interest in favour of confidentiality, Trans Mountain notes the comments filed by the Independent Contractors and Businesses Association,<sup>38</sup> the Canadian Energy Pipeline Association,<sup>39</sup> and the Canadian, Alberta and British Columbia Chambers of Commerce.<sup>40</sup> These comments emphasize:

- (i) the public interest in ensuring that Trans Mountain is able to meet legal requirements, such as maintaining adequate insurance to mitigate risks and meeting financial resource requirements;<sup>41</sup>
- (ii) potential cascading consequences for other companies, their employees and the Canadian energy industry if Trans Mountain is unable to secure sufficient insurance at a reasonable price;<sup>42</sup>
- (iii) concerns that continuing public disclosure of the name(s) of Trans Mountain's insurer(s) could create an insurance marketplace capacity concern for Canada's energy sector more generally;<sup>43</sup> and
- (iv) that if critics of the TMEP are successful in causing harm to Trans Mountain as intended, similar pressure campaigns and tactics could reasonably be expected to be utilized against other pipeline companies and companies in Canada's energy sector, thereby undermining Canada's competitiveness in attracting investment and new projects in these economically important sectors.<sup>44</sup>

In addition to the reasonably anticipated material loss and prejudice to Trans Mountain, its shippers and insurers arising from public disclosure of Pipeline insurer identities – as discussed herein and in the Request – the above submissions demonstrate that the public's interest in favour of confidentiality outweighs any legitimate interest served by disclosure. The confidentiality order sought in the Request is thus justified under section 60(b) of the CER Act.

#### Conclusion

If Trans Mountain is required to publicly disclose the name(s) of its insurer(s), it is reasonable to expect that it will suffer material negative financial and competitive impacts, including difficulties meeting mandatory insurance requirements at a reasonable cost for an operating facility. These impacts are largely undisputed (and, in some cases, affirmed) by the public comments, and would affect not only Trans Mountain, but also its shippers and insurers, as well as the wide spectrum of companies and individuals who rely on the Pipeline, TMEP and the Canadian energy industry

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<sup>38</sup> Independent Contractors and Businesses Association, Letter to support Request (March 15, 2021) ([A7R9K5](#)).

<sup>39</sup> Canadian Energy Pipeline Association, Letter supporting Request (March 22, 2021) ([A7S1I9](#)).

<sup>40</sup> Canadian Chamber of Commerce, Letter in support of Request (March 22, 2021) ([A7S1H9](#)).

<sup>41</sup> Independent Contractors and Businesses Association, Letter to support Request (March 15, 2021) ([A7R9K5](#)), p 1; Canadian Energy Pipeline Association, Letter supporting Request (March 22, 2021) ([A7S1I9](#)).

<sup>42</sup> Independent Contractors and Businesses Association, Letter to support Request (March 15, 2021) ([A7R9K5](#)), p 2; Alberta Department of Energy, Letter in support of Request (March 17, 2021) ([A7S1Y9](#)).

<sup>43</sup> Canadian Chamber of Commerce, Letter in support of Request (March 22, 2021) ([A7S1H9](#)), p 1-2.

<sup>44</sup> Canadian Chamber of Commerce, Letter in support of Request (March 22, 2021) ([A7S1H9](#)), p 2.

more broadly. Conversely, the prejudice to third parties alleged by many of the opposing commenters is prejudice to those who seek to undermine Canada's federal pipeline regulatory regime and cause the very harm that Trans Mountain is seeking to avoid in its Request. The public's interest can thus only be served through granting the requested confidential treatment of the limited information at issue.

Trans Mountain submits that it has met the test for confidentiality under both section 60(a) and 60(b) of the CER Act with respect to the name(s) of its insurer(s) and that the Request should be granted.

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.

c: Commenters (by email)<sup>45</sup>

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<sup>45</sup> Please note that contact information was not provided for Boyd ([A7R9E2](#)), Ron Halisky ([A7R9E4](#)) and Matthew Vollrath ([A7R9I8](#)) in the information they filed with the CER and, therefore, Trans Mountain was not able to provide them with a copy of this filing.