

**TRANS MOUNTAIN PIPELINE ULC**  
**SECTION 52 OF THE NATIONAL ENERGY BOARD ACT APPLICATION FOR**  
**TRANS MOUNTAIN EXPANSION PROJECT**  
**NEB FILE 0F-FAC-OIL-T260**  
**FILED June 30, 2014**  
**OH-001-2014**

**NOTICE OF MOTION 3**

**Name of Person Bringing Motion**

This Motion by Intervenor, Robyn Allan, is made pursuant to Hearing Order OH-001-2014 (the “Hearing”) and Section 35 of the National Energy Board Rules of Practice and Procedure, 1995. SOR 195-208.

**Decision or Order Requested**

- a) The Board rule whether Trans Mountain has correctly represented the Board’s determinations regarding the scope of the public interest review and environmental assessment including Trans Mountain’s claims that the scope of the hearing to determine whether the Application is in the public interest is limited to the definition of the “Project” in Volume 1 as the incremental facilities and incremental capacity rather than environmental and socio-economic impact of the entire Trans Mountain system which consists of the existing or legacy pipeline system **plus** proposed expanded facilities;
- b) Should the Board rule that Trans Mountain’s limited definition of the public interest and scope of the public interest review and environmental assessment is inconsistent with the Board’s view, the Board clearly define its intended scope of the public interest test and require Trans Mountain to amend its evidence to reflect this scope, file appropriate reports and other documentation to correct its evidence to incorporate such scope, and answer the Information Request submitted by Intervenor Robyn Allan in a full and adequate manner that reflects the Board’s ruling on the scope of the public interest review and environmental assessment;
- c) If the Board rules that Trans Mountain’s representation of the public interest and environmental assessment in a) above is correct such that only the incremental impact of the project is within the scope of the public interest review, that the Board require Trans Mountain remove any and all references in its submissions to this hearing that refer to the long-term shipper commitments of 707,500 barrels per day, and revenue generation related to those commitments, including but not limited to where those commitments support List of Issue #2—Financial Feasibility of the Proposed Project—since approximately 275,000

barrels a day of Trans Mountain's long-term business obligations are dependent upon the throughput capacity of the existing system. Without the capacity of the existing system the project, according to Trans Mountain, is not financially feasible. If the legacy pipeline system is outside the scope of the List of Issues as Trans Mountain asserts, and if the Board agrees, then Trans Mountain should not be permitted to rely on the revenues generated from the existing system in support of its Application;

- d) If the Board agrees that Trans Mountain's interpretations of the Board's scope of review as expressed in a) above is correct, the Board require that Trans Mountain remove from the Hearing record sections of Volume 1 that rely on Volume 2 and Volume 2 in its entirety because in order to arrive at its conclusions regarding the need for the project, production, supply, demand, financial and commercial viability, financing capacity, and impact, Volume 2 relies on the operation of the **entire** system (legacy and proposed expansion), not just the operation of the expanded system. Thus Trans Mountain violates its limited definition of the scope of review and interpretation of the List of Issues. Any evidence that relies on this definition correspondingly needs to be removed from the Hearing record;
- e) The Board rule on whether Trans Mountain has correctly assessed the relevance of questions posed by the Intervenor Robyn Allan when it references the Board's List of Issues and refuses to address the information requests as detailed in Table 1. This ruling to explicitly address, but not be limited to Trans Mountain's assertion that the following areas of review are "**not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project**":
- i) **Corporate Structure, Corporate Governance, Accounting Practices, and Financial Capacity of Kinder Morgan—Trans Mountain's US based owners**

The corporate structure, corporate governance, financial relationships, financial capacity, and accounting practices of and between the complete family of Kinder Morgan corporate entities related to the Trans Mountain assets is relevant to List of Issues:

- #2. The economic feasibility of the proposed project;
- #3. The potential commercial impacts of the proposed project; and
- #4. The potential environmental and socio-economic effects of the proposed project, including any cumulative environmental effects that are likely to result from the project, including those required to be considered by the NEB's Filing Manual.

Trans Mountain claims they are not.

## **ii) Tax Obligations of Kinder Morgan's Canadian Based Entities Related to Trans Mountain's Regulated Assets**

The purpose of information requests is to seek answers that assist in testing the accuracy and reliability of the evidence for the benefit of the Board's consideration. Trans Mountain has claimed that its expansion project will contribute significantly to fiscal revenue at the federal and provincial level and asserts that Trans Mountain's profits are assessed at an effective tax rate of 25%. A reliable and accurate method to test this claim is to examine the historical tax treatment of Trans Mountain. Trans Mountain refuses to answer questions related to Trans Mountain and its related Canadian entities tax treatment, effective rate of taxation, structure, accounting or other issues that would assist in understanding the actual tax remitted in Canada. Once actual tax treatment and corresponding tax burdens are determined, it would be possible to reliably predict the likely tax treatment and remittance in Canada of the expanded operations. These estimates could be compared against the estimates provided in the Application, Volume 2, Appendix B. This line of inquiry is relevant to the List of Issues:

- #2. The economic feasibility of the proposed project;
- #3. The potential commercial impacts of the proposed project; and
- #4. The potential environmental and socio-economic effects of the proposed project, including any cumulative environmental effects that are likely to result from the project, including those required to be considered by the NEB's Filing Manual.
- #8. The terms and conditions to be included in any approval the Board may issue.

Trans Mountain maintains they are not.

## **iii) Distributable Cash Flow**

Trans Mountain distributes cash flow on a regular basis to its US parent through a number of corporate entities. Trans Mountain asserts that a fulsome explanation and reconciliation of its Distributable Cash Flow (DCF) is not relevant to the List of Issues when these distributions represent a significant outflow of funds on a regular and obligated basis. Such distributions are related to Kinder Morgan Canadian entity agreements with their US parent(s). The distribution of Trans Mountain system cash flow of more than \$150 million per year on a revenue base of roughly \$300 million a year appears to be siphoned away from the Canadian economy under the current operation and obligations of the Trans Mountain system (according to publicly available information). This outflow of funds from the Canadian economy is likely to be proportionally as great or greater under the proposed expanded operations. A full, accurate and reliable accounting of DCF speaks directly to whether the project is in the Canadian public interest and the List of Issues:

- #2. The economic feasibility of the proposed project;

- #3. The potential commercial impacts of the proposed project; and
- #4. The potential environmental and socio-economic effects of the proposed project, including any cumulative environmental effects that are likely to result from the project, including those required to be considered by the NEB's Filing Manual.
- #8. The terms and conditions to be included in any approval the Board may issue.

Trans Mountain maintains they are not.

#### **iv) Petroleum Product Price Increases**

Trans Mountain was asked whether the impact of higher prices for heavy crude oil assumed to result from its proposed project, and their impact at the pump and on other end user petroleum product prices facing Canadian consumers and businesses was a public interest issue. "Does Trans Mountain believe that the cost of gasoline at the pumps, and the cost of other petroleum product prices facing end users may be a public interest issue? If not, please explain." IR Robyn Allan, 1.23 (I).

Trans Mountain has responded that "the information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project."

The evidence filed by the Proponent in Volume 2, Appendix A predicts an increase in heavy crude oil prices of roughly \$5 - \$6 per barrel (US 2012) more each year for 20 years than if the Trans Mountain expansion does not proceed. The Proponent relies on these netback improvements to predict project economic benefits. This translates to 3 - 4 cents a litre at the pumps in current dollars.

KMC President Ian Anderson has told US analysts in January 2014 that he believes the project will increase the price of oil an average of \$25 per barrel. These price increases, when passed on, amount to roughly 15 cents a litre at the pumps in current dollars.

The Board is respectfully asked to rule as to whether or not the increase in the price of crude oil predicted by Trans Mountain, and the impact of this price increase on the Canadian economy and Canadians, is relevant to the List of Issues. In particular, whether the impact of higher crude oil prices because of Trans Mountain's expansion project on:

- i) Western Canadian refineries that rely on western Canadian oil supply;
- ii) Canadian end users of the oil transported by the pipeline; and
- iii) Canadian end users of oil produced in Canada

is within the relevancy of the List of Issues. Trans Mountain claims they are not.

- f) If the Board determines that Trans Mountain's interpretations of the Board's scope of List of Issues as expressed in e) i-iv above are incorrect, the Board require that Trans Mountain provide full and adequate responses to Robyn Allan's Information Request No. 1 as outlined in Table 1 below, accordingly, by a fixed date;
- g) If the Board determines that Trans Mountain's interpretations of the Board's scope of List of Issues as expressed in e) i-iv above are correct, the Board require that Trans Mountain remove from the Hearing record sections of Volume 1 that rely on Volume 2 and Volume 2 in its entirety because in order to arrive at its conclusions regarding the need for the project, production, supply, demand, financial and commercial viability, financing capacity, and commercial impact, Volume 2 relies on the relevance of the following as being included in Board's the List of Issues:
- i) The corporate structure, corporate governance, financial relationships, financial capacity, and accounting practices of and between the complete family of Kinder Morgan corporate entities in Canada and the US (Volume 2, Section 3.2.2, Financial Capacity of the Applicant and Volume 2 Appendix B Conference Board of Canada and Volume 2, Appendix C, Evidence of John Reed );
  - ii) The tax liability Kinder Morgan can reasonably expected to pay when the expanded system is operational which is dependent upon its corporate structure and reliance on Canadian tax law and the Canadian US tax treaty (Volume 2, Section 3.4 Project Benefits, Volume 2, Appendix B, Conference Board of Canada and Volume 2, Appendix C, Evidence of John Reed);
  - iii) Trans Mountain's Distributable Cash Flow under system expansion (Volume 2, 3.2.2 Financial Capacity of the Applicant, Volume 2, Appendix B, Conference Board of Canada and Volume 2, Appendix C, Evidence of John Reed);
  - iv) Higher prices for crude oil received from producers (referred to as netbacks in the Application) and any reliance on them to predict benefits (Volume 2, Appendix A IHS Steven Kelly);
- h) The Board compel Trans Mountain to file as evidence:
- i) Kinder Morgan Analyst Conference, Investor Presentation, Transcripts Relevant to Trans Mountain and/or Kinder Morgan Canada, 2005 - 2014 including all presentations made by Kinder Morgan Canada President, Ian Anderson;
  - ii) Kinder Morgan Analyst Conference, Investor Presentation, Slides Relevant to Trans Mountain and/or Kinder Morgan Canada, 2005 - 2014, including all slides relied on by Kinder Morgan Canada President, Ian Anderson;

- iii) Trans Mountain Pipeline ULC, Responses to Canadian association of Petroleum Producers, Information Request No.1, RH-001-2012, revised January 10, 2013, Exhibit B16-6;
  - iv) Application, Trans Mountain Pipeline ULC, For Approval of 2014 Final Tolls Pursuant to 2013 - 2015 Incentive Toll Settlement, 2014, Final Toll Calculation Schedules;
  - v) Governance Guidelines for the Board of Directors, Corporate Governance and Board of Directors for KMI, KMR and KMP;
  - vi) Annual Report KMI, KMR, KMP 2013;
  - vii) Western Canada Propane, Heavy Oil and Diluent Supply and Demand, Prepared for Kinder Morgan Cochin ULC, S. Kelly and G. Goobie, IHS, August 2012;
  - viii) Analysis of Potential Future Rail Competition to Trans Mountain and Other Pipelines, Appendix A, George R Schink, RH-001-2012;
  - ix) Powerpoint presentation delivered by Trans Mountain's legal firm, Osler, Hoskin, Harcourt LLP on the "Regulatory and Aboriginal Issues Facing the Pipeline Industry" at the Canadian Bar Association, Environmental Law Section, June 5, 2014;
  - x) Report identified by Trans Mountain in the IR where it says in the Application that "IHS estimates that Western Canadian producers would have received between \$15-19 billion in incremental revenue in 2012, had they been able to bring their crude oil to other markets";
  - xi) IHS Report where the figure is \$11 billion, not \$15 - 19 billion for 2012 ([http://www.ontarioenergyboard.ca/html/oebenergyeast/documents/IHS-CERA\\_Oil\\_Sands\\_Economic\\_Benefits\\_Jan2014.pdf](http://www.ontarioenergyboard.ca/html/oebenergyeast/documents/IHS-CERA_Oil_Sands_Economic_Benefits_Jan2014.pdf)); and
  - xii) Canadian Chamber of Commerce, \$50 Million a Day, September 17, 2013, Brochure; and
- i) Any other relief the Board determines necessary under the circumstances.

## **Statement of Facts**

### **A. Scope of the Review — Incremental Expansion or Entire System**

1. The Trans Mountain Expansion Project is an application to increase the capacity of the Trans Mountain system from 300,000 barrels per day to 890,000 barrels per day—net incremental throughput capacity of 50,000 barrels per day on the existing pipeline and 540,000 barrels per day on the new pipeline, for a total increased capacity of 590,000 barrels per day. In order to expand capacity Trans Mountain has included in its Application three new segments that complete the twinning of the system and a reactivation of two segments on its existing pipeline.
2. Trans Mountain claims that the public interest review and environmental assessment is limited to the impact of the applied for facilities and states that, “The scope of the hearing is whether the Application is in the public interest. The Hearing Order refers to the Project as described in Volume 1 of the Application and states that the Board will hold a public hearing to consider whether to recommend approval of this Project. Existing approved facilities, such as the legacy Trans Mountain Pipeline system, are not included in the Application for the Board’s approval as they are currently operating under existing approvals.”<sup>1</sup> Thus Trans Mountain maintains that any consideration of the environmental or socio-economic implications from the legacy Trans Mountain system, including its contribution to cumulative impacts, is expressly excluded from the Board’s scope of review. Based on this reasoning, Trans Mountain refuses to address information requests related to the legacy Trans Mountain system, or the public interest and environmental assessment of the aggregate system during construction, operation and abandonment.
3. With respect to Trans Mountain making conclusions on behalf of the Board, the Intervenor Robyn Allan requested clarification in IR No. 1 Question 1.01 (a) “Please confirm that the purpose of the Trans Mountain Expansion Project Public Hearing is to determine if it is in the public interest for Trans Mountain to construct the “Project” and operate the existing **plus** expanded system. If unable to confirm, please explain why the public interest review would not extend to the cumulative impact of the entire system as defined by the existing system and an expansion to that system.”
4. Trans Mountain responded: “*The purpose of the Trans Mountain Expansion (TMEP) hearing is provided in section 52 of the National Energy Board Act, which sets out the criteria the Board must consider in making a recommendation as to whether a certificate of public convenience and necessity should be issued for the TMEP:*

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<sup>1</sup>Trans Mountain Response to Allan R IR No 1, 1.01(a), page 7 -10, <https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/2451003/2478117/B40%2D1%2D%2D%20Trans%20Mountain%20Response%20to%20Allan%20R%20IR%20No.%201%20A3X5V9.pdf?nodeid=2480550&vernum=-2>

52. (1) *If the Board is of the opinion that an application for a certificate in respect of a pipeline is complete, it shall prepare and submit to the Minister, and make public, a report setting out*

*(a) its recommendation as to whether or not the certificate should be issued for all or any portion of the pipeline, taking into account whether the pipeline is and will be required by the present and future public convenience and necessity, and the reasons for that recommendation; and*

*(b) regardless of the recommendation that the Board makes, all the terms and conditions that it considers necessary or desirable in the public interest to which the certificate will be subject if the Governor in Council were to direct the Board to issue the certificate, including terms or conditions relating to when the certificate or portions or provisions of it are to come into force.*

*(2) In making its recommendation, the Board shall have regard to all considerations that appear to it to be directly related to the pipeline and to be relevant, and may have regard to the following:*

*(a) the availability of oil, gas or any other commodity to the pipeline;*

*(b) the existence of markets, actual or potential;*

*(c) the economic feasibility of the pipeline;*

*(d) the financial responsibility and financial structure of the applicant, the methods of financing the pipeline and the extent to which Canadians will have an opportunity to participate in the financing, engineering and construction of the pipeline; and*

*(e) any public interest that in the Board's opinion may be affected by the issuance of the certificate or the dismissal of the application.*

*(3) If the application relates to a designated project within the meaning of section 2 of the Canadian Environmental Assessment Act, 2012, the report must also set out the Board's environmental assessment prepared under that Act in respect of that project. [emphasis added]*

*The term "public interest" is defined in the NEB's strategic plan as follows: "The public interest is inclusive of all Canadians and refers to a balance of economic, environmental and social considerations that changes as society's values and preferences evolve over time."*

*The Joint Review Panel in the Enbridge Northern Gateway Project confirmed that the public interest and the public convenience and necessity test under Part III of the NEB Act focuses on the effects of the proposed project:*

*In the Panel's view, the public interest is inclusive of all Canadians, locally, regionally, and nationally, and refers to the integration of environmental, societal, and economic considerations. A determination in the public interest is based on findings of fact and a review of scientific and technical information.*

*When applying the "present and future public convenience and necessity" test under Part III of the National Energy Board Act the Panel must consider the overall "public interest."*



*The National Energy Board Act requires the Panel to consider any public interest that may be affected by granting or refusing the application. The Panel considers the burdens the project could place on Canadians, and the benefits the project could bring to Canadians.*

*In making its recommendation, the Panel assesses all the evidence on the record, including:*

- the proposed engineering design and safety of the facilities;*
- the economics of the proposed project including supply, demand, and*
- access to the facilities;*
- the effect the proposed project would have on the environment, as well as*
- the effect the environment would have on the project; and*
- the effect the proposed project would have on individuals, Aboriginal and*
- non-Aboriginal groups, communities, and society. [emphasis added]*

*The NEB Filing Manual states that the Board's purpose is to "promote safety, security, environmental protection and economic efficiency in the Canadian public interest through its regulation of pipelines, energy development and trade as mandated by Parliament. As a result, companies regulated by the National Energy Board Act (NEB Act) are required to obtain the Board's approval to, among other things: add new facilities or modify or abandon existing facilities; ..." The Board's review is thus focused on new facilities as well as modification or abandonment of existing facilities within its jurisdiction.*

*The scope of the hearing is whether the Application is in the public interest. The Hearing Order refers to the Project as described in Volume 1 of the Application and states that the Board will hold a public hearing to consider whether to recommend approval of this Project. Existing approved facilities, such as the legacy Trans Mountain Pipeline system, are not included in the Application for the Board's approval as they are currently operating under existing approvals.*

*The Board has previously reviewed new facilities proposed in facilities applications when existing and previously approved pipelines are in place. For example, in its Keystone XL decision (OH-001-2009), the Board said that an application was submitted for the Keystone XL Pipeline would be an addition to the Base Keystone. Base Keystone was defined as pipelines segments that were previously approved by the Board.*

*The relevant cumulative effects are described in the Board's List of Issues on page 18 of the TMEP Hearing Order: "the potential environmental and socio-economic effects of the proposed project, including any cumulative environmental effects that are likely to result from the project, including those required to be considered by the NEB's Filing Manual." The NEB's Filing Manual defines cumulative effects as "changes to the environment that are caused by an action in combination with other past, present and future human actions." Therefore Trans Mountain's consideration of cumulative effects takes into account a variety*

*of human actions. However, Trans Mountain is only seeking approval for the facilities described in the Application.*

*References:*

*Enbridge Northern Gateway Joint Review Panel Report (December 2013), Volume 2, 8. [http://gatewaypanel.review-examen.gc.ca/clfnsi/dcmnt/rcmndtnsrprt/rcmndtnsrprtvlm2c\\_hp2-eng.html#s2](http://gatewaypanel.review-examen.gc.ca/clfnsi/dcmnt/rcmndtnsrprt/rcmndtnsrprtvlm2c_hp2-eng.html#s2). Acquired May 14, 2014.*

*National Energy Board. 2010. Reasons for Decision, OH-001-2009, Keystone XL Pipeline, iii, 14 and 34. [https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/418396/550305/604643/604441/A1S1E7\\_-\\_OH-1-2009\\_Reasons\\_for\\_Decision.pdf?nodeid=604637&vernum=-2](https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/418396/550305/604643/604441/A1S1E7_-_OH-1-2009_Reasons_for_Decision.pdf?nodeid=604637&vernum=-2). Acquired May 14, 2014.*

*National Energy Board. 2014. Filing Manual (Release 2014-01), v. 1-1. <http://www.neb-one.gc.ca/clf-nsi/rpblctn/ctsndrgrltn/flngmnl/flngmnl-eng.pdf>. Acquired May 12, 2014.*

*National Energy Board. 2014. Strategic Plan (January 16, 2014). <http://www.neb-one.gc.ca/clf-nsi/rthnb/whwrndrgvrnnc/strtgcpnl-eng.html>. Acquired May 12, 2014.” [End of answer to 1.01(a)]*

5. Trans Mountain maintains in its Application that the Project is underpinned by long-term binding contracts for firm transportation service on the system in the amount of 707,500 barrels per day.<sup>2</sup> “The long term financial commitments Trans Mountain has received are from a group of shippers consisting of significant players in the energy industry that have investment grade or better credit ratings; this provides further assurance concerning the cash flow that will be generated by the Project and its ability to support the long term financing requirements.”<sup>3</sup>
6. The project requests an expansion in capacity throughput of 590,000 barrels a day and Trans Mountain maintains that since its existing line is capable of 350,000 barrels a day of light product, that the relevant capacity expansion for review is 540,000 barrels a day. If this is the case, then the expansion project alone cannot meet the long term commitments that Trans Mountain has said it has made to shippers.
7. Trans Mountain is required to have at least 20% of the expanded volume available for spot shippers. “The need for the Project has also been strongly demonstrated by the long-term financial commitments shippers have made through entering into firm contracts for 80 per

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<sup>2</sup> Application, Volume 1, page 1-4, paragraph 19 - 21. [https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/2451003/2385938/B1%2D1\\_%2D\\_V1\\_SUMM\\_%2D\\_A3S0Q7.pdf?nodeid=2385048&vernum=-2](https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/2451003/2385938/B1%2D1_%2D_V1_SUMM_%2D_A3S0Q7.pdf?nodeid=2385048&vernum=-2)

<sup>3</sup> Application, Volume 2, [https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/2451003/2385938/B1%2D4\\_%2D\\_V2\\_3of4\\_PROJ\\_OVERVIEW\\_%2D\\_A3S0R0.pdf?nodeid=2392679&vernum=-2](https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/2451003/2385938/B1%2D4_%2D_V2_3of4_PROJ_OVERVIEW_%2D_A3S0R0.pdf?nodeid=2392679&vernum=-2)

cent of the nominal capacity on the expanded system. The tolling methodology, including all aspects of the transportation service agreements, was approved by the Board in its Reasons for Decision RH-001-2012, released on May 13, 2013.” This means that approximately 275,000 barrels a day of capacity on the existing system is required if Trans Mountain is to meet its long-term shipper commitments and Board imposed requirements for spot capacity. Trans Mountain’s expansion is not financially or commercially feasible without the operation of the existing pipeline since its exclusion would mean Trans Mountain cannot meet its shipper commitments, nor the return on equity requirements imposed by its US parent (as explained in transcripts from RH-001-2012). The proposed expansion requires the entire system, not just the incremental additions to the existing system, and thus the existing system must be included in the scope of the public interest review and environmental assessment.

8. Trans Mountain cannot have it both ways—include the revenue generating ability of the entire system to assert the financial feasibility of the project for List of Issue #2, but exclude that same system from consideration when addressing other List of Issues such as #4 and #5. There are also critical issues of pipeline integrity and capital expenditure requirements on a more than 60 year old system related to List of Issues #2 that Trans Mountain refuses to address, but includes the existing system as part of its support for fulfilling Issue #2.
9. Unless the revenue generating capability of the entire system is available to shippers—which not only means both pipelines, but also all storage facilities, the entire marine facility, and 34 tankers a month (not 29)—the cash flow needed to support the capital cost of the investment and meet a minimum return on equity required by Trans Mountain’s US based owner KMP, will be insufficient. The project is not financially viable if the revenue generated by only the expanded capacity (432,000 barrels a day of long term commitments on the new pipeline) is considered relevant to the List of Issues.
10. Thus the scope of the review must of necessity extend to the entire system, not just the applied for capacity expansion and new facilities, because without the operation of the entire system to meet the long-term contractual obligations, the expansion is not financially feasible.
11. Simply stated, the Application is for an incremental 590,000 barrels per day, but the project, according to Trans Mountain, is economic because of long-term contracts for 707,500 barrels per day. Thus the financial underpinning of the Project relies on the operation of both pipelines. Fulsome review of the entire system is relevant to the List of Issues.
12. According to Trans Mountain the Board has already decided the public interest and public convenience and necessity test under Part III of the NEB Act because Trans Mountain asserts the findings of the Enbridge Northern Gateway Panel’s decision dictate the determination of the test by this Panel. This conclusion is arrived at despite the fact that the Enbridge Northern Gateway application was a greenfield project and represents a situation where the “project” and the “system” are synonymous. Trans Mountain has further determined that it is

the narrower definition of “project” and not the “system” that is applicable for this Panel. Trans Mountain states that, “The Joint Review Panel in the Enbridge Northern Gateway Project confirmed that the public interest and the public convenience and necessity test under Part III of the NEB Act focuses on the effects of the proposed project:... “When applying the “present and future public convenience and necessity” test under Part III of the National Energy Board Act the Panel must consider the overall “public interest.” The National Energy Board Act requires the Panel to consider any public interest that may be affected by granting or refusing the application. The Panel considers the burdens the project could place on Canadians, and the benefits the project could bring to Canadians”, which Trans Mountain is claiming such burdens and benefits to refer only to the facilities applied for in the Application and not benefits and burdens related to the system that the Application ultimately creates. The Board is respectfully asked to address in its ruling in a) - c) above, whether it relies on the Northern Gateway Panel’s recommendation report and underlying rationale as having determined this Panel’s public interest test as suggested by Trans Mountain.

13. Trans Mountain has also claimed that the Board has defined cumulative effects as those effects that are limited to “the facilities described in the Application” despite the fact that the NEB’s Filing Manual defines cumulative effects as “changes to the environment that are caused by an action in combination with other past, present and future human actions.” The existing Trans Mountain system must certainly be considered a “past, present and future human action” by the same “humans” that support the Application. Trans Mountain, after providing the above definition of cumulative effects, somehow excludes its human actions related to the existing system and concludes, “Therefore Trans Mountain’s consideration of cumulative effects takes into account a variety of human actions. However, Trans Mountain is only seeking approval for the facilities described in the Application” confirming that Trans Mountain does not consider its existing facilities to warrant consideration as something that is “in combination with past human actions” and that limiting its considerations to the cumulative effects of human actions related to its expanded capacity, and not the entire system, is an approach endorsed by the Panel. The Board is respectfully asked to address in its ruling in a) - c) above, whether it agrees that cumulative effects are limited to the expanded project as suggested by Trans Mountain. If the Panel does not, it is respectfully requested to, for purposes of this Hearing, define what this Board considers as cumulative effects and compel Trans Mountain to amend its evidence accordingly.
14. Trans Mountain Pipeline ULC, and Kinder Morgan Canada Inc., are attempting to manipulate the National Energy Board Section 52 Application process, particularly in the scope of the evidence in its Application and during the first round of information requests, because they have relied on both pipelines and related facilities to support the financial feasibility of their Application, but refuse to include a full evaluation of the socio-economic and environmental risk arising from their two pipelines and related facilities in the environmental assessment and benefits case. The companies know the public interest extends to economic and environmental concerns over the throughput of the entire system, the

aggregate risk of all storage facilities, and the total tanker traffic triggered by the system. The corporate representative present the scope of their concern as being reflective of the entire system in public presentations, town hall meetings and in the media, and then artfully the company restricts this scope in its evidence and Information Request responses on the record at this hearing.

15. The Proponent is attempting to speak for the Board when it provides interpretations of the Board's prior hearing decisions and represents them as if they are the conclusions that will be reached by this Panel. In contrast, when Trans Mountain is requested to submit evidence from its Part IV Toll Hearing record, or confirm contradictory evidence its experts presented in previous hearings, the company refuses to do so on the grounds that prior hearings are complete and not relevant to this Hearing.<sup>4</sup>
16. The Board, and not Trans Mountain, should provide the definitive explanation as to whether or not a public interest review that reflects a "balance of economic, environmental and social considerations that changes as society's values and preferences evolve over time" extends to the cumulative socio-economic and environmental impact of the existing plus expanded Trans Mountain system. Trans Mountain has represented its view as if its view is undeniably the Board's view.
17. Trans Mountain has stated that "the entire Application reflects Trans Mountain's view of the public interest with respect to the Project"<sup>5</sup> and then relies on this view to determine the extent of the scope and level of rigour with which it will provide responses. Since it is the NEB and not Trans Mountain that will determine if the Project is in the public interest, it is important to have the Board fulfill its function and identify where and when Trans Mountain has overstepped its authority in its responses regarding the scope of the public interest and the relevancy of questions to the List of Issues. An absence of clarification will result in continued confusion, inefficient use of valuable time, and unnecessary frustration, particularly for Intervenors. Trans Mountain has adopted a tone and approach that suggests authority and determination where it does not have the right to do so. It is the Board and not Trans Mountain that is the regulatory authority. The Board is respectfully requested to redress Trans Mountain's behaviour at this stage in the review process by ruling on these

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<sup>4</sup> Trans Mountain Response to Eliesen M IR No 1, 1.02 Need for, and limitations of, Netback Analysis, page 7 - 10. Mr. Kelly's netback analysis provided to the Part IV Toll Application RH-001-2012 contradicts his evidence in Volume 2, Appendix A and provides cautions against relying on netback analysis not included in this application. Trans Mountain was asked to file as evidence Mr. Kelly's written reply evidence for the Part IV Hearing and refused to do so. Trans Mountain claims that, "the referenced proceeding is now complete and the reference does not form part of Trans Mountain's evidence for the Facilities Application. <https://docs.neb-one.gc.ca/ll-eng/llisapi.dll?func=ll&objId=2478561&objAction=browse&viewType=1>

<sup>5</sup> Trans Mountain Response to Allan R IR No 1, 1.01 (e) page 10 of 216. <https://docs.neb-one.gc.ca/ll-eng/llisapi.dll?func=ll&objId=2478117&objAction=browse&viewType=1>

important issues and providing a full description of the scope of its public interest review and definition of cumulative effects.

## **B. Information Request Relevance to List of Issues**

18. In addition to Trans Mountain defining the meaning of cumulative impacts to exclude the existing system, limiting public interest scrutiny to net rather than gross system impacts, and suggesting that past Board decisions have determined the current Panel's thinking, Trans Mountain narrowly interprets the Board's List of Issues throughout its responses to Intervenor Robyn Allan's Information Request No. 1 as if this interpretation is unquestionably the Board's view.
19. Trans Mountain's application of its interpretation of the scope of the review and the List of Issues in its responses to Intervenor Robyn Allan is allowing the company to:
  - i) avoid addressing important questions it finds inconvenient in order to disrupt the process and make extra work for the Intervenor that detracts from effective and efficient intervention;
  - ii) frustrate appropriate due diligence of the Proponent's Application by a responsible and qualified Intervenor; and
  - iii) interfere with the timely and effective delivery of due diligence that the Intervenor is attempting to undertake in an effort to serve the Board in fulfilling its duty to assess the project's impact on the Canadian public interest and conduct an environmental assessment as required by the *National Energy Board Act* and the *Canadian Environmental Assessment Act 2012*.
20. The Intervenor Robyn Allan has dedicated significant time and effort at her own personal expense in reviewing sections of the Application provided by Trans Mountain and has developed questions targeted at specific issues related to her qualifications and expertise. Care and attention has been applied to ensure the questions asked of Trans Mountain are relevant not only to assist the Board in fulfilling its duty, but to contribute to a full and balanced assessment of the impact of the project on the Canadian public interest including economic, environmental, safety and social considerations.
21. Trans Mountain's legal firm, Osler, Hoskin, Harcourt LLP recently reflected an unsavory attitude toward the Intervention by Robyn Allan when making a powerpoint presentation on the "Regulatory and Aboriginal Issues Facing the Pipeline Industry" at the Canadian Bar Association, Environmental Law Section, June 5, 2014. Slide 16 of Osler's presentation states:

## Regulatory Issues

- “Paper filibuster” process at NEB
  - Individuals with no connection to projects are being allowed to intervene and overwhelm projects with IR’s and legal motions (i.e., 10,400 IR’s in TMX, 3 weeks to reply)
  - Much easier to challenge a project from a home office in Whistler than attend an oil sands hearing in Fort McMurray
  - Often debate matters of government policy
- Other issues: move towards light handed regulation, common carrier obligations

OSLER

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22. The manner in which Trans Mountain has addressed Robyn Allan’s Information Request, coupled with an inappropriate, unprofessional, and rude signalling out of her work as a qualified Intervenor by its legal firm, is disturbing.
23. The Intervenor Robyn Allan is one of two Whistler residents granted Intervenor status by the Board at this Hearing; the other being Marc Eliesen. Their residence is the same.
24. Robyn Allan can confirm to the Panel that if this Intervention is a paper filibuster it is of Trans Mountain’s making. In her professional career she has not seen a business case so poorly developed and so clearly self-serving. The Application is repetitive, there is no sensitivity analysis and the “scenarios” are different version of the same positive outlook without identification of risks to the forecasts or standard disclaimers regarding forward looking statements. The Proponent has not taken into consideration the time value of money, nor has it incorporated exchange rate sensitivity, or exchange rate translation of benefits.

This lack of professional integrity by Trans Mountain in the development of its case necessitates an increased volume of requests for information. When Trans Mountain refuses to answer legitimate requests, provides inadequate responses or provides erroneous answers it leads to more documentation. The volume of written work is increased because the Board has removed the opportunity to cross-examination witnesses; a position Robyn Allan would like to remind the proponent and its legal counsel, Trans Mountain aggressively supported.

25. Robyn Allan can assure the Panel that there is nothing easy about this process. Trans Mountain has a pre-approved funding arrangement sanctioned by the Board to pursue its application for expansion in the amount of \$136.3 million. It is offensive to be accused of generating paper when the efforts Robyn Allan has undertaken to date as an Intervenor have been at her own expense.
26. It is respectfully requested that the Board require Trans Mountain to table the powerpoint presentation prepared by Osler as evidence at this hearing as there are a number of comments made in that presentation that reflect a contemptuous attitude held by Trans Mountain's legal firm not only for the NEB process but also toward qualified intervenors with legitimate public interest and environmental concerns. The Board should be aware of such evidence.
27. Trans Mountain's oft repeated claim in its responses to Intervenor Robyn Allan's Information Request is that **"The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project"**.
28. Trans Mountain deflects to this claim in its responses to Robyn Allan's questions even when its own experts have included as relevant the very items being raised in the Intervenor Robyn Allan's information request. In particular, Volume 2, Appendix C, evidence of John Reed adopted by Trans Mountain states, "In my usage of these terms, "financial feasibility" refers to commercial matters and focuses on the Board's criteria regarding the ability of a project to be financed and whether a project's fixed charges are likely to be paid. Commercial matters include factors such as the fairness and efficiency of the tolling principles proposed and the contractual commitments that have been signed. The term "economic feasibility," as I have used it, addresses the justification and need for a project within an industry context and centers on the Board's criterion that a project be used and useful. Economic feasibility is dependent on whether adequate commodity supply exists, and whether there is market demand for a project, and examines the level of shipper support for a project."<sup>6</sup>
29. As well, Trans Mountain has adopted Mr. Reed's explicit statement that:

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<sup>6</sup> Trans Mountain Application, Volume 2, Appendix C, Direct Evidence of John Reed, page 7. <https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/2451003/2385938/B1%2D5%2D%2D%20V2%204of4%20PROJ%20OVERVIEW%20A3S0R1.pdf?nodeid=2392869&vernum=-2>



*“Section 52 of the NEB Act states that when considering an application for a certificate:  
[T]he Board shall have regard to all considerations that appear to it to be relevant, and may have regard to the following:  
(a) the availability of oil, gas or any other commodity to the pipeline; (b) the existence of markets, actual or potential;  
(c) the economic feasibility of the pipeline;  
(d) the financial responsibility and financial structure of the applicant, the methods of financing the pipeline and the extent to which Canadians will have an opportunity of participating in the financing, engineering and construction of the pipeline; and  
(e) any public interest that in the Board's opinion may be affected by the granting or the refusing of the application.*

*In practice, the Board's standard for determining if a project is economically feasible— criterion (c) above—has been the presentation of satisfactory evidence that criteria (a), (b) and (d) above have been met.”* It is important to note that (c) above is List of Issue #2 in the Hearing Order relevant to this Application.

30. If the Intervention by Robyn Allan is to be effective Trans Mountain should not be allowed to waste Robyn Allan's time and personal resources. The Board is respectfully requested to clarify its intended scope of review and the line of questioning afforded in the List of Issues rather than allow Trans Mountain to continue to perform as a shadow regulator.
31. Should the Board rule in favour of Trans Mountain's narrow interpretation of the List of Issues in its responses to Robyn Allan, the Board is respectfully requested to order Trans Mountain to remove from the Hearing record a substantive portion of Trans Mountain's Application, including Volume 2, Appendix C. This request is necessary because, if Trans Mountain's interpretation is deemed by the Board to be correct, then the company cannot rely on Appendix C that explicitly adopts a wider interpretation that would support a fulsome response to Robyn Allan's questions.
32. Until there is closure as to the scope of the review and the limits in the List of Issues Trans Mountain will effectively frustrate efforts to obtain important and full answers. Time is of the essence in this proceeding and cannot be wasted by focussing on lines of questioning and the development of evidence that is ultimately deemed to be outside the scope of the review.
33. The corporate structure, corporate governance, financial relationships, financial capacity, and accounting practices of and between the complete family of Kinder Morgan corporate entities related to the operation of Trans Mountain assets is relevant to List of Issues:
  - #2. The economic feasibility of the proposed project;
  - #3. The potential commercial impacts of the proposed project; and

- #4. The potential environmental and socio-economic effects of the proposed project, including any cumulative environmental effects that are likely to result from the project, including those required to be considered by the NEB's Filing Manual.
34. Trans Mountain refuses to address information requests that attempt to undertake due diligence of Kinder Morgan's corporate structure and flow of funds beyond Trans Mountain Pipeline L.P., its sole limited partner Kinder Morgan Cochin ULC, its general partner Trans Mountain Pipeline L.P., and its operator Trans Mountain Kinder Morgan Canada Inc. This is an arbitrary and absurd limitation since profits and cash distributions flow through a complex of corporate structures to Trans Mountain's US based owner(s) on a regular and obligatory basis.
35. Kinder Morgan's complex corporate structure in Canada and the US has been designed to limit liability of the US based owners and to channel vast financial resources from the Canadian operations to the US parent for distribution to unitholders, with apparently very little or no tax consequence. This is a public interest issue. When cash flow is distributed from revenue generated in Canada through the operation of Trans Mountain's assets, away from the Canadian economy, this represents a drain on the Canadian economy which is ignored in Volume 2, Appendix B. Trans Mountain is refusing to respond to information requests regarding a fulsome explanation of the flow of funds out of the Canadian economy and thus refuses to address the negative impact on the Canadian economy and public interest afforded by their complex corporate structure, partnership agreements, and sophisticated use of elements in the Canadian and US tax regime and trans border tax rules.
36. Trans Mountain's controlling owners Kinder Morgan Energy Partners L.P.—a Master Limited Partnership based in Houston Texas, USA, and, in turn, its owner and operators KMI and KMR and their, primarily, US based shareholders—consistently and regularly receive distributable cash flow (DCF) arising from the operation of the pipeline system's assets. The project would significantly increase DCF, but Trans Mountain is refusing to answer questions related to this obligation, or what it means when its owner distributes its DCF to its owners and how that impacts the financial capacity and credit quality of KMP and its parents. Trans Mountain's US owners must rely on their ability to raise debt and equity to finance the project because of the requirements concerning DCF. The financial capacity and credit quality of KMP and its owners, needs to be fully explored by the Board to ensure Trans Mountain's representations in its Application are accurate and reliable.
37. Kinder Morgan's corporate structure, reliance on distributable cash flow (DCF) and unique and complex tax arrangements in the US puts the entity under significant business risk, particularly in a rising interest rate environment. Trans Mountain resists responding to questions related to KMP, KMR and KMI's financial stability, the "family's" complex corporate structure, required cash distributions from Canadian operations to its US based parent(s), tax remittances, and potential business vulnerabilities frustrating proper due diligence.

38. Since the only entities required to file information with securities regulators for the benefit of unitholders or shareholders are registered in the US, a complete mapping and explanation of all the corporate entities in Canada, their inter-relationships, agreements and accounting and tax practices in Canada and the US, cannot be fully recreated from public sources. For proper due diligence and consideration by the Panel, Trans Mountain needs to supply fulsome information on the record to this Hearing. Trans Mountain asserts that the limited information provided in related Part IV hearings is not part of this Hearing record, and refuses to provide transcripts and slides presented to US analysts since 2005 as evidence. It is unclear what it is that Trans Mountain is desperately trying to hide from the Board.
39. Without a fulsome understanding of the complete Kinder Morgan corporate structure, the accounting and tax arrangements, how the structure facilitates an extensive limitation of liability, how the structure avoids corporate responsibility and accountability in the event of a major or catastrophic spill event, how the structure avoids Kinder Morgan paying its fair share of taxes—a share it has represented to the public it pays, but in reality it appears it does not—and how the complex corporate structure facilitates an excessive outflow of revenues not available to other Canadian based pipeline operators the Board regulates, the Board will be basing its decisions on an artificially positive narrative of the commercial and economic impact this project will have on Canada's economy and Canadians. The Board can only consider the information on the record and Trans Mountain's evidence to date is a carefully crafted narrative for the Panel allowing it to artfully avoiding scrutiny by asserting that questions related to testing this crafted narrative are not relevant to the scope of the review or the List of Issues.
40. The Board needs to be aware that if it does not require a full and accurate accounting of the DCF obligations and practices related to Trans Mountain's current operation and proposed expansion, and the expansion project proceeds, US based Kinder Morgan will be allowed to rely on its sophisticated and complex structures to increase significantly its extraction of vast financial resources in the form of DCF—possibly hundreds of millions of dollars annually—from the Canadian economy. Lack of full disclosure and transparency will allow Kinder Morgan to continue the pretence that these revenues stay in Canada for the benefit of Canadians.
41. Trans Mountain claims its project will deliver fiscal benefits to the Canadian economy. Since Trans Mountain's revenue base will expand from approximately \$300 million per year (\$2012) to \$944 million per year (\$2012) and it has been granted a guaranteed return on equity in its Part IV Toll Application, the company claims that the fiscal contribution would be significant. However, Trans Mountain tells it US based investment analysts a very different story. According to Ian Anderson, President of Kinder Morgan Canada, the Trans

Mountain system received a cash tax refund of US \$4.1 million in 2013 and cash distributions to the US parent of US \$186.5 million.<sup>7</sup>

42. According to Trans Mountain's Part IV Toll Application for approval of the tolls it would charge if the system is expanded, during the first year of operation of Trans Mountain's expansion, Trans Mountain has no tax obligation. However, evidence Trans Mountain has filed in this Application claims Trans Mountain, as part of the corporate sector, will pay an effective tax rate of 25% on its earnings in 2018.
43. It is important that the tax actually paid by (cash not booked) Kinder Morgan Canadian based entities related to the regulated pipeline system be understood as a method by which to test the claims Trans Mountain makes in its Application on the likely fiscal contribution of the project. This is particularly important so these figures can be compared to the estimates in Volume 2, Appendix B. Appendix B applies an effective tax rate of 25% on the results of an Input-Output model that relies on Trans Mountain's revenues as input, but ignores Trans Mountain's DCF obligations. In this way the analysis pretends that all incremental revenue remains within Canada when it does not. Trans Mountain did not inform its expert that it currently siphons cash flow out of the Canadian economy, and intends to continue to do so under the terms of its expansion. As such the Conference Board analysis treats total incremental revenues as an input into its model, not revenues net of knowable distributions to its US owners.
44. Kinder Morgan Canada has made representation to US investor analysts that Trans Mountain's system cash tax liability has averaged approximately \$1.5 million US per year over the last five years (2009 - 2013). This information directly contradicts claims made regarding the system's tax liability in "Tolls Pursuant 2013 to 2015 Incentive Toll Settlement, 2014, Final Toll" and representations made by association in its Application to this Panel, Volume 2, Appendix B. Trans Mountain maintains that questions regarding tax liability, contradiction with other evidence filed with the NEB and representations made to analysts, are outside the scope of the List of Issues. The requests for information speak directly to List of Issues #2, #3, #4, and #8, not to mention a potential betrayal of the public trust if Trans Mountain promises fiscal benefits it knows to be false.
45. Trans Mountain refuses to address questions related to the economic impact of higher netbacks on the Canadian economy including the higher feedstock costs facing refineries because of higher netbacks, and the likely increase in petroleum product prices when these higher feedstock costs are passed onto consumers. Trans Mountain argues that these issues are outside the relevancy of the List of Issues, but relies on the higher netback revenues (an inter-relationship between upstream activity, oil transport and downstream market demand) to generate a significant portion of its benefits case. If the Board rules that Trans Mountain's

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<sup>7</sup> Trans Mountain DCF, 2014 Analysts Conference, Slide 3, [http://www.kindermorgan.com/investor/presentations/2014\\_Analysts\\_Conf\\_05\\_KMCanada.pdf](http://www.kindermorgan.com/investor/presentations/2014_Analysts_Conf_05_KMCanada.pdf)

interpretation is correct then Trans Mountain cannot rely on higher producer netbacks in support of its application and any and all references relying on netbacks should be removed from the hearing record.

46. Intervenor Robyn Allan prepared information requests under a number of topic headings during the first round of IRs. Table 1 compiles the responses to information asked of Trans Mountain where the company defaults to its interpretation of the scope of the review, claims the requests are irrelevant based on the List of Issues, and provides no meaningful response.
47. Table 1 acknowledges the Board's desire for formatted tables as requested by the Board in Ruling No. 3. Due to formatting problems, it is not the exact format supplied by the Board, but is believed to serve the intended purpose of efficiently addressing the inadequate responses to facilitate the Board's decision-making.

**48. Table 1. Request for Board Ruling on Trans Mountain’s Interpretation of List of Issues**

IR	Request	Answer	Request for Board Ruling
1.01 (q)	<p><b>TRANS MOUNTAIN AND THE PUBLIC INTEREST</b></p> <p>If a working definition relied on in the preparation of the Application is provided, please confirm:</p> <p>1) that the owner of Trans Mountain, Kinder Morgan Energy Partners L.P. (KMP), had agreed to this working definition prior to the preparation of the Application;</p> <p>2) when Trans Mountain’s US based owner agreed to the definition of the Canadian public interest relied on in the preparation of the Application; and</p> <p>3) if this agreement to the definition of the Canadian public interest by KMP, relied on by Trans Mountain (or KMC), was subject to KMP Board approval and, if so, when such Board approval was granted.</p>	<p><b>The information request is not relevant to one or more of the issues identified in the National Energy Board’s List of Issues for the Trans Mountain Expansion Project.</b> Please refer to the response to Allan R IR No. 1.01a.</p> <p><i>(Note: However, Trans Mountain has stated in response to 1.01 (e) that “the entire Application reflects Trans Mountain’s view of the public interest with respect to the Project.” and 1.01 (a) states that Trans Mountain relies on public interest as defined the NEB’s strategic plan.)</i></p>	<p>Trans Mountain does not have the authority to decide to construct and operate the expansion. That decision is made in Houston, Texas by the Board of KMP, and/or KMI, and KMR. The Panel is being asked to recommend the project without ensuring that Trans Mountain’s definition of the public interest has been given corporate Board approval by its US based owners. Trans Mountain states that the Application reflects Trans Mountain’s view of the public interest, but Trans Mountain is little more than a ULC that holds the CPCN. KMC is simply an operating entity as Trans Mountain describes in response to 1.02 (f) “The employees of Kinder Morgan Canada Inc. provide the labour to operate assets Kinder Morgan owns in Canada including the Trans Mountain assets” with no real authority over capital expansions and significant decision making. Important corporate decisions are made in Texas. The ability of Kinder Morgan to meet the Canadian public interest will rest, in the long run, on the Texas based decision makers’ understanding of, and respect for, the Canadian Public Interest. OH-001-2014 states, “The Board’s recommendation report to the Governor in Council will consider whether the Project is in the public interest.” The Board should know whether Trans Mountain’s decision makers in Texas have reviewed and approved the definition of the Canadian Public Interest and the Application.</p>

IR	Request	Answer	Request for Board Ruling
1.02 (g)	<p><b>KINDER MORGAN CORPORATE STRUCTURE</b></p> <p>Please identify any and all entities in Canada that would be “operating partnerships” of KMP. <i>(note: KMP’s annual report states Kinder Morgan Energy Partners, L.P. is a Delaware limited partnership formed August 1992. References to “we,” “us,” “our,” “KMP,” or the “Partnership” mean Kinder Morgan Energy Partners, L.P., its operating limited partnerships and their majority-owned and controlled subsidiaries. KMP owns an interest in or operates ~ 52,000 miles of pipelines and 180 terminals. It conducts business through 5 segments that provide services to KMP’s customers and create value for unitholders. They are: ▪ Natural Gas Pipelines ▪ CO2 ▪ Products Pipelines ▪ Terminals (facilities located across the U.S. and portions of Canada; and ▪ <b>Kinder Morgan Canada</b></i></p> <p><i>KMP focuses on fee-based services, and takes “advantage of the tax benefits of a limited partnership structure.” The company operates through 5 LPs and 1 limited liability corporation: (i) Kinder Morgan Operating L.P. “A”; (ii) Kinder Morgan Operating L.P. “B”; (iii) Kinder Morgan Operating L.P. “C”; (iv) Kinder Morgan Operating L.P. “D”; (v) Kinder Morgan CO2 Company, L.P.; and (vi) Copano. The 5 limited partnerships are operating partnerships, and are the 98.9899% limited partner and our general partner is the 1.0101% general partner in each. KMP and <b>operating partnerships</b> are governed by agreements that are referred to as the partnership agreements.</i></p>	<p><b>The information request is not relevant to one or more of the issues identified in the National Energy Board’s List of Issues for the Trans Mountain Expansion Project.</b></p>	<p>Trans Mountain refuses to answer a simple question related to whether or not KMP has any operating partnerships in Canada which would facilitate a more informed reading of filings with the US SEC. This suggests that Trans Mountain will not address other questions related to its parent and its parent’s complex relationships. The reluctance to address such questions frustrates appropriate intervention on the List of Issues #2 and #3</p> <p>The answer means Trans Mountain does not believe it is required to address corporate structure questions beyond the limited answers it has provided to the Board in NEB IR NO 1 1.7 “Corporate Structure” and related attachments, or the limited answers provided to R. Allan IR NO 1.02 even though R. Allan explained that the NEB requests did not explore deeply enough the corporate structure and the ability of Trans Mountain to avoid liability and fiscal responsibility.</p> <p>The Intervenor Robyn Allan clearly explained in the preamble to her request that, “Reference (iii) is an Information Request submitted to Trans Mountain by the Panel. Every effort has been made not to duplicate the Panel’s questions in reference (iii). Please take efforts to provide direct answers to the questions as posed, as the Panel’s questions do not sufficiently cover the scope of answers sought here. For greater clarity, please include the full text, charts, tables, schematics or other relevant materials relied on in support of answers to this Information Request respecting corporate structure.” Trans Mountain ignored this request.</p>

IR	Request	Answer	Request for Board Ruling
1.02 (q)	Please confirm the NEB undertook no review of the Kinder Morgan and Terasen transaction in 2005. If a review was undertaken please provide the reference. If no review was undertaken please provide the reasons as to why no review was undertaken.	<b>The information request is not relevant to one or more of the issues on the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b>	<p>Kinder Morgan bought the shares of Terasen in 2005 which resulted in a review of the transaction by the BC Utilities Commission for all but the Trans Mountain and Jet Fuel activities. No public interest review on the NEB regulated assets was conducted by the NEB because the NEB Act did not require a review in the circumstance where shares of an entity were bought. Two years later Kinder Morgan dropped the assets down to KMP and engaged in accounting activities that suggest a premium was paid for the assets. The NEB undertook a review, but on the asset drop down between Kinder Morgan entities, not on the question of whether or not the purchase of Trans Mountain's assets by a US Master Limited Partnership was in the public interest as that transaction was complete.</p> <p>The staged purchase (buy Terasen shares, and then sell off a portion of assets in 2007, and reorganize Trans Mountain through various structures including ULC's) seems to have allowed the US owners to aggressively enhance financial returns and minimize tax liability not in the public interest. Trans Mountain's refusal to address the series of transactions that led to its complex structure and how they enable the company to access features of the Canadian Income Tax Act and the Canadian US Tax Treaty not available to other Canadian pipeline operators is unacceptable because, should its tax treatment change in Canada or the US, the financial strength of the company to weather such changes is questionable. This question speaks directly to List of Issues #2 and #3.</p>



IR	Request	Answer	Request for Board Ruling
1.02 (r)	Please provide the history of the transactions, corporate restructuring, including dates, which occurred to result in the Trans Mountain assets being placed into the entity identified in (i)1, beginning in 2005 when Kinder Morgan purchased shares of Terasen that included Terasen Pipelines (Trans Mountain) Inc or TM.	<b>The information request is not relevant to one or more of the issues on the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b>	<p>Please refer to the discussion for 1.02 (q)</p> <p>An unintended consequence of the NEB Act requirements for review of assets versus share purchase seems to have resulted in a lack of appropriate due diligence on the part of the Board to fully and adequately determine if Kinder Morgan's approach to ownership and control of the Trans Mountain assets and Certificates of Public Convenience and Necessity are in the public interest, particularly with respect to Kinder Morgan's partnership agreements and distributions of cash flow to its US based unit holders.</p> <p>As uncomfortable as that might be for the NEB, it is necessary that a fulsome and comprehensible picture of the corporate structure of Kinder Morgan and how tax and other liability is avoided and how asset values are determined, and whether those values reflect efficient and functioning markets or are distorted by a series of events that lead to unintended economic consequences not in the public interest.</p>

IR	Request	Answer	Request for Board Ruling
1.02 (s)	In the history provided in response to (r), please include a discussion of any and all NEB application(s) requesting permission to transfer the CPCN, and identify with references, any other regulatory applications or NEB reviews that have been necessitated because of corporate reorganizations, revisions, asset transfers or other changes which led to the corporate structure related to the Trans Mountain assets, ownership, control and operation which currently exists.	<b>The information request is not relevant to one or more of the issues on the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b>	Please refer to the discussion for 1.02 (q)

IR	Request	Answer	Request for Board Ruling
1.02 (t)	<p>Please confirm that the Business Corporation Act (Alberta) (BCAA) was amended on May 17, 2005 to permit the incorporation of unlimited liability corporations in Alberta and indicate whether Trans Mountain Pipeline ULC is incorporated under this Act. If Trans Mountain Pipeline ULC is not incorporated in Alberta, please indicate the jurisdiction where Trans Mountain Pipeline ULC is incorporated. If unable to confirm the date of amendments to the BCAA to permit incorporation of ULC's in Alberta as May 17, 2005, please provide the date when such permitting amendments were made.</p>	<p><b>The information request is not relevant to one or more of the issues on the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b></p>	<p>Trans Mountain has informed the NEB that Trans Mountain ULC is an unlimited liability corporation governed by the Business Corporation Act (Alberta) and registered in Alberta. (Trans Mountain Response to NEB IR NO. 1.7 (b).</p> <p>Trans Mountain has not informed the Board that Trans Mountain ULC is also registered in Nova Scotia and that its registration in Alberta is an extra-provincial registration. The Board may want to follow up on the withheld information with Kinder Morgan.</p> <p>ULC incorporation is a unique structure to facilitate the avoidance of financial and tax liability in Canada for US owners. A full disclosure of all ULCs and where they are registered is critical to List of Issues #3.</p> <p>It is unclear as to why Trans Mountain would tell the regulator Trans Mountain ULC is registered in Alberta but refuse to answer a directly related question on this topic to Intervenor Robyn Allan. This dual standard is indicative of Trans Mountain's attempt to frustrate the Intervenor's due diligence.</p>

IR	Request	Answer	Request for Board Ruling
1.02 (u)	Please provide the date Trans Mountain Pipeline ULC was incorporated as a ULC and the business reasons, including tax reasons, for making the change.	<b>The information request is not relevant to one or more of the issues on the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b>	<p>Kinder Morgan has engaged in a complex web of corporate structures to facilitate their activities in Canada for the benefit of their unit holders (approximately 90% of which are US residents) and yet refuses to answer questions related to a clear understanding of how the structure operates and the financial impact on the Canadian economy and federal and provincial fiscal revenues.</p> <p>The company has submitted an Application that claims Trans Mountain pays an effective tax rate of 25% when this is not the case. The company has submitted an Application that claims toll revenues are retained within the Canadian economy when they are not. However, it is impossible to piece together the full impact of Kinder Morgan's creative structure, and the accounting and tax implications without full disclosure by the company.</p> <p>Trans Mountain Pipeline ULC is fronting the Application for Kinder Morgan. It is unclear as to how questions regarding its structure, tax liability, flow of funds, and other business relationships could be outside the List of Issues, particularly List of Issues items #1 - #4 and Issue #8.</p>

IR	Request	Answer	Request for Board Ruling
1.02 (v)	<p>Please confirm that ULC partnership-like characteristics create certain advantages under US tax law for US resident corporations who own investments in Canada. If confirmation cannot be provided, what is Trans Mountains's understanding of the US tax law treatment of a US resident corporations and/or partnerships who own ULCs in Canada including a discussion of the treatment of ULCs in the jurisdiction where Trans Mountain Pipeline ULC is registered?</p>	<p>For Canadian income tax purposes an unlimited liability company is a corporation resident in Canada and as such is both subject to income tax in Canada and liable to withhold tax on cross border payments on the same basis as any other form of Canadian corporation. <b>The treatment under US tax law of US resident corporations or partnerships that own interests in a Canadian unlimited liability company is not relevant to one or more of the issues identified by the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b></p>	<p>The treatment of the US entities that own Canadian entities, particularly ULCs, is absolutely relevant to the manner in which Kinder Morgan is able to avoid the tax burden it claims it faces in its Application, particularly in Volume 2.</p> <p>When a ULC(s) is owned by a US resident, the treatment under the Canadian US Tax Treaty can result in a reduced rate of withholding tax than what an alternative form of structure would give rise to and be an unintended result of the CRA.</p> <p>In order to understand how Kinder Morgan is able to tell its investors that its cash tax obligation in the past five years has been roughly \$1.5 annually on revenues of roughly \$300 million a year, while it tells the NEB in its Toll Applications it is much higher, it is necessary to understand the entire corporate structure, and application of CRA and the US Canada Tax Treaty to Kinder Morgan's Canadian activities. This is not possible without a complete picture of inter-company transfers, partnership agreements, cash distributions, fees versus profits, etc. Kinder Morgan knows the answers to these questions. Trans Mountain refuses to provide them and continues to maintain that its project will contribute fiscal benefits well in excess of conflicting figures President of Kinder Morgan Canada Ian Anderson has provided to Kinder Morgan investors and analysts in conferences held in Texas. The company's publicly stated actual historical practice contradicts the evidence the company has filed with the NEB.</p>

IR	Request	Answer	Request for Board Ruling
1.02 (w)	<p>Please indicate the tax benefits achieved or achievable, in Canada and the US, by Kinder Morgan/Trans Mountain with respect to the ULC structure as these benefits pertain to:</p> <p>1) book taxes as defined by Kinder Morgan/Trans Mountain in reference (viii);</p> <p>2) accounting book taxes (if different than the book tax definition in reference (viii));</p> <p>3) cash taxes, including but not limited to a discussion that addresses withholding taxes and withholding tax rates.</p>	<p><b>The information request is not relevant to one or more of the issues on the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b></p>	<p>Please see 1.02 (v) above.</p> <p>If Trans Mountain gains the support of the Board in maintaining that the taxes paid (or not paid as the case may be) by the existing operation of the Trans Mountain system is outside the List of Issues, and the Board agrees that a quantification of Kinder Morgan's current fiscal contributions in Canada are irrelevant in providing a reliable estimate of its likely future fiscal contributions to the Canadian economy, then Trans Mountain must remove Volume 2 of its application that relies on any and all references of fiscal benefits from its project.</p> <p>It is entirely inappropriate for Trans Mountain to claim it pays an effective corporate tax rate of 25% and build these figures into its benefits case when the company knows it will not and then argue due diligence on this issue is outside the relevance of the List of Issues. This line of questioning speaks directly to the Public Interest and List of Issues #2 - #5 and #8.</p>

IR	Request	Answer	Request for Board Ruling
1.03 (b)	<p><b>TRANS MOUNTAIN OPERATING REVENUE AND TAX LIABILITY</b></p> <p>Please confirm that in reference (iv) the line item “Trans Mountain System” figures “Actual” represents distributions to Trans Mountain’s US based owner(s) each year as indicated from 2010 - 2013 and “Budget 2014” represents anticipated distributions to Trans Mountain’s US based owner(s) for 2014. Please provide the names of the entities that received these and will receive these distributions in 2014, on a proportional or absolute basis (if proportions vary from year to year). If not confirmed please explain fully the amounts identified in reference (iv) and where these amounts were distributed (which Kinder Morgan entity(ies) received the amounts), identified by corporate entity name.</p>	<p>Not confirmed. The reference to “Actual” represents the final financial calculation of distributable cash flow, as a measure of cash flow performance, for the Trans Mountain reporting segment for the reporting period. The reference to “Budget 2014” represents the estimated distributable cash flow, as a performance measure, for the Trans Mountain reporting segment for 2014. <b>Although Trans Mountain does not consider this request relevant to one or more of the issues identified in the National Energy Board’s List of Issues for the Trans Mountain Pipeline, please refer to NEB IR No. 1.07a for a map that explains structure.</b></p>	<p>If Intervenor Robyn Allan accepts this answer, it will appear as if Trans Mountain’s claim that request is outside the List of Issues is acceptable. It is not.</p> <p>Trans Mountain has defined DCF as Distributable Cash Flow—a metric relied on by its US parent to estimate the ability of TM assets to generate cash flow and indicate available cash. (IR response to R. Allan 1.03 (a)).</p> <p>KMC President Ian Anderson told US analysts January 29, 2014 that Trans Mountain operations contributed \$185.6 million in DCF, including a refund of cash taxes of \$4.1 million in 2013. These monies flow through to its US parent as part of the partnership agreement. On Trans Mountain’s revenue base of approximately \$300 million, about 60%, as represented by distributable cash flow, is taken out of the Canadian economy for distribution to primarily US based unit holders. The funds flow through the complex corporate structure—yet to be explained by Trans Mountain—to the Houston head office of Kinder Morgan.</p> <p>The determination of DCF and the terms and conditions under which the partnership agreements determines its regular repatriation is critical to the financial viability of the Trans Mountain expansion as well as the operation of the entire system, since the toll rates accepted under the recent Part IV Toll Application are expected to apply to all barrels shipped on the system, not just the barrels on the twinned pipeline.</p>

IR	Request	Answer	Request for Board Ruling
1.03 (c)	<p>Please define the following terms presented in reference (iv):</p> <ol style="list-style-type: none"> <li>1) Trans Mountain System Contribution;</li> <li>2) book tax; and</li> <li>3) cash tax.</li> </ol>	<p><b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b></p>	<p>It is surprising that Trans Mountain would not provide simple definitions of the terms it uses to promote the value of Trans Mountain's cash flow to the US investment community.</p> <p>This question speaks directly to the obligatory outflow of funds from Trans Mountain entities registered and operating in Canada, in particular List of Issues #1 - #4. When monies are transferred to foreign entities they are not available to meet economic and other business challenges, or environmental events that may occur in Canada. These funds are not available, as claimed in Volume 2 Appendix B, to stimulate the Canadian economy.</p> <p>If Trans Mountain is not required to answer then the Proponent should remove from its application all references related to the benefits of Canadian sourced toll rates arising from the operation of its system because the only meaningful source for Trans Mountain's DCF is from tolls charged to Canadian shippers who use the system. Trans Mountain has not informed the Board of the terms in its agreements with its parent(s) and how those result in a regular flow of funds out of the Canadian economy. This is deliberately misleading, as Trans Mountain knows that a significant portion of the \$644 million in additional toll revenues estimated by the Conference Board will be transferred to the US on a quarterly or annual basis. (TM would not answer if it is on a quarterly or annual basis although it is thought to be quarterly).</p>



IR	Request	Answer	Request for Board Ruling
1.03 (d)	Please confirm the definitions provided in c) 1-3 also apply to reference (v). If unable to confirm please provide an indication of where and how the definitions differ and provide the appropriate definitions of these terms as used in reference (v).	<b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b>	Please see 1.03 (c) above.

IR	Request	Answer	Request for Board Ruling
1.03 (e)	<p>Please provide further details underlying the determination of “Trans Mountain System” DCF reference (iv) and please include 2009 actuals in reference (v). The details to include:</p> <ol style="list-style-type: none"> <li>1) the net income included in the “Trans Mountain System Contribution” for each of the years shown;</li> <li>2) a detailed explanation of the differences between the “Trans Mountain System Contribution” and the return on equity;</li> <li>3) details of the income tax rates used for calculating the book taxes in each of the 5 years;</li> <li>4) the primary five items that result in the cash taxes differing from the book taxes; and</li> <li>5) reconcile the amounts noted above to the amounts shown on Trans Mountain’s Incentive Toll filing in reference (iii) ITS-14 and ITS-21 for 2013 and forecast for 2014.</li> </ol>	<p>The Trans Mountain System as represented for financial reporting purposes in the Kinder Morgan Energy Partners, L.P. Form 10K and investor material presented by Mr. Ian Anderson includes the consolidated financial results of all of the businesses within the Trans Mountain System of which the NEB regulated Trans Mountain pipeline is one component.</p> <p><b>The information request is not relevant to one or more of the issues identified in the National Energy Board’s List of Issues for the Trans Mountain Expansion Project.</b></p>	<p>There is a serious discrepancy between information that Trans Mountain has filed with the NEB in its Application for Approval of 2014 Final Tolls Pursuant to the 2013 - 2015 Incentive Toll Settlement, its claims made to investors and claims made in the Section 52 Application now before the Board. It is imperative that the Canadian public interest be served by ensuring that every representation being made by Kinder Morgan Canada as operator of the Trans Mountain system are transparent, consistent and reliable. As it stands, there is no reason to believe that the relatively general information estimated by the Proponent’s expert Mr. Hodgson is either correct or reliable.</p> <p>The information request is directly related to the List of Issues #1 - #5 and #8 because Ian Anderson’s text of his presentation that accompanied the slide related to the Trans Mountain expansion project, the NEB process and the province of BC’s five conditions. To suggest that the majority of the numbers underlying the figures he provided do not relate to the Trans Mountain regulated assets is misleading to the NEB, investors and analysts or both.</p> <p>If the Panel concurs that the Proponent is correct and does not need to answer this question, then the discrepancy between three representations of Trans Mountain’s performance—two of which have been made to the NEB—will continue to exist. The only representation where Trans Mountain claims to have paid corporate taxes in 2013 is implied in this Application. The other two references show the company received a tax refund.</p>

IR	Request	Answer	Request for Board Ruling
1.03 (f)	Please reconcile Trans Mountain's "book tax" \$19.3 million US in 2013 in reference (iv) with reference (iii) ITS-14 2013 Line 11 Approved Income Tax Provision \$7,406 million, 2013 Actual \$7,114 and ITS-21 line 14 Income Tax Refund \$524,000.	<b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b>	Please see 1.03 (e) above.
1.03 (g)	Please confirm that it was Trans Mountain and not the Conference Board that prepared the \$300 million a year revenue figure for the existing Trans Mountain system and clearly indicate whether Trans Mountain informed the Conference Board of an annual requirement or practice Trans Mountain maintains whereby a significant portion of the annual revenues generated by the operation of the existing system are distributed to its US based parent on a regular, and at least annual, basis. If unable to confirm, please identify who prepared the \$300 million per year revenue figure and if the Conference Board accepted the gross revenue figure as being spent in the Canadian economy to operate and maintain the existing pipeline.	Confirmed. The ownership structure of Trans Mountain is not relevant to this analysis. The new revenues would be generated on a pipeline operating in Canada, therefore the economic impacts would occur in Canada. The operating economic impacts do assume that some of the required inputs to operate the pipeline are imported.	<p>This question speaks to List of Issues #3 &amp; #4.</p> <p>Trans Mountain has confirmed that it distributes \$150 million plus each year to its US owner because of the "ownership structure."</p> <p>When the revenues are earned and accounted for, they generate cash flow which leaves Canada and therefore are not a positive impact in the Canadian economy—they are a negative impact, particularly as it relates to the Canadian balance of trade capital account.</p> <p>If the Board does not compel Trans Mountain to answer the question then the Conference Board analysis that relies on revenues generated from tolls as an input into an input-output model must be removed from the Application (Volume 2, Appendix B). If what happens to the \$300 million a year in revenues is outside the scope of the List of Issues, then the Proponent can not rely on these revenues as part of its evaluation of how to derive input for its input output model.</p>

IR	Request	Answer	Request for Board Ruling
1.03 (i)	<p>Please confirm that it was the Conference Board and not Trans Mountain that prepared the \$644 million a year revenue figure for the net operating revenue projection of the expanded Trans Mountain system and clearly indicate whether Trans Mountain informed the Conference Board of an annual requirement or practice Trans Mountain intends to maintain whereby a significant portion of the annual revenues generated by the operation of the expanded system will be distributed to its US based parent on an annual basis. If unable to confirm, please identify who prepared the \$644 million per year revenue figure and if the Conference Board accepted the gross revenue figure related to the expansion as being spent in the C</p>	<p>Confirmed. The ownership structure of Trans Mountain is not relevant to this analysis. The new revenues would be generated on a pipeline operating in Canada, therefore the economic impacts would occur in Canada. The operating economic impacts do assume that some of the required inputs to operate the pipeline are imported.</p>	<p>Trans Mountain may have misled its expert on the treatment of the net increase in revenues assumed to arise from the expansion of the project as the company has confirmed they did not advise him.</p> <p>Trans Mountain knows that likely more than 50% (could be as high as 80%) of the revenues arising as cash inflow from its expansion project and application of higher toll rates on all barrels, will regularly and relatively quickly be cash outflow to the US as DCF to its parent. Thus these monies are not available to feed through the Canadian economy for 20 years as modelled in the Conference Board Input-Output model.</p> <p>If the Board determines that the use of funds is outside the scope of the List of Issues then it must also conclude that the source of funds is outside the List of Issues and remove from the Application any and all reference to the impact of toll as a benefit, particularly Volume 2, Appendix B that deals with toll revenues.</p>

IR	Request	Answer	Request for Board Ruling
1.03 (k)	<p>Please confirm that if it were understood that a significant share of annual operating revenues were to be regularly, and at least annually, distributed to a US based owner that netting off this share from the annual Trans Mountain expansion related operating revenue estimate would be prudent in order to more accurately reflect the GDP impact on the Canadian economy of operating the Trans Mountain expansion. If not confirmed, please explain why significant regular and anticipated distributions by one company in the pipeline industry (Trans Mountain) to its US parent in a static I/O model “that reflects an industry average” would not be required at the input estimation stage of I/O analysis.</p>	<p>Not confirmed. Please see the response to Allan R IR No. 1.03 h</p> <p>No. 1.03 h states: Confirmed. The ownership structure of Trans Mountain is not relevant to this analysis. The new revenues would be generated on a pipeline operating in Canada, therefore the economic impacts would occur in Canada. The operating economic impacts do assume that some of the required inputs to operate the pipeline are imported</p> <p>(Note: response to IR 1.03 (s) states: “Trans Mountain did not inform the Conference Board of the cash flow distributions to its U.S. parent. However, it would not change the results. Please see the response to Allan R IR No. 1.03h.”</p>	<p>Not only does Trans Mountain say “not confirmed” and then “confirmed” in its redirect, this answer is an example of the manipulation of the Board and the review process Trans Mountain is attempting. Trans Mountain claims gross revenues from its expansion as a benefit, and argues that any exploration, analysis or critique of what actually happens to those revenues when cumulated because of the “ownership structure” of the company is irrelevant.</p> <p>Input-Output analysis relies on shocks to the model based on a reasonable and professional estimation of what that likely “shock” is to be. That shock is likely to be much less than what Trans Mountain has facilitated its expert to estimate. There is no way to identify if the consultant actually believes and supports Trans Mountain’s claim that the full revenue should be relied on. If the Board upholds Trans Mountain’s response, an indication of who in Trans Mountain provided the answer is requested, and a confirmation that the Conference Board and Mr. Hodgson agree with this answer is requested.</p> <p>The new revenues are, in the first instance, operating costs (toll rates) of shippers that would be paid (at least in part) anyway because shippers not using Trans Mountain would be using rail transport. Trans Mountain’s attempted answer to claim gross revenues from the expansion as “new” revenues makes no accounting or economic sense.</p> <p>Attempting to claim these monies as new revenues and then ignoring a known rate of siphoning off to the US parent is highly misleading and inaccurate.</p>

IR	Request	Answer	Request for Board Ruling
1.03 (k) cnt'd			<p>There is no method by which to determine who is answering these questions particularly when Trans Mountain has confirmed that it has no expertise in Input-Output analysis and thus it is not clear how Trans Mountain would know whether the analysis would be changed or not if they alerted their expert to the DCF arrangements with its US parent.</p> <p>In Trans Mountain Response to M. Eliesen, 1.02 (s) Trans Mountains states, "Trans Mountain does not have internal Company expertise concerning Input-Output analysis and related issues. Trans Mountain retained an external economic consultant to advise the Company on the selection of the appropriate firm and approach to conduct the economic benefits study." If Trans Mountain has no expertise, and did not inform the Conference Board of the DCF distributions, how does it know there would be no change to the model specifications or results?</p> <p>The Conference Board results would change proportionately based on the adjustment to the shock. That is, if the shock were reduced by 50%, the results would fall by 50% (because the model has fixed coefficients and is linear) It is critical that Trans Mountain be held to account for the claim that if its expert knew, it would not have an impact.</p>

IR	Request	Answer	Request for Board Ruling
1.03 (n)	Please confirm that if an analysis on the economic impact of the current Trans Mountain system as defined in reference (i) was to be undertaken for 2013 that a reliable estimate of the impact in 2013 would be the actual revenues in 2013 less the cash flow distributed to the US parent. If not confirmed, please provide an estimate for operating revenue impact in 2013 that could be relied on to establish an input for the I/O model relied on in reference (i).	<p>Not confirmed. Please see the response to Allan R IR No. 1.03h.</p> <p>No. 1.03 h states: Confirmed. The ownership structure of Trans Mountain is not relevant to this analysis. The new revenues would be generated on a pipeline operating in Canada, therefore the economic impacts would occur in Canada. The operating economic impacts do assume that some of the required inputs to operate the pipeline are imported</p>	<p>Not only does Trans Mountain say “not confirmed” and then “confirmed” in its redirect, this answer is an example of how Trans Mountain attempts to manipulate the review process.</p> <p>Trans Mountain does not have expertise in Input-Output modelling which is why they hired a consultant to undertake the analysis. (see 1.03 (k) above). Trans Mountain has stated its consultant is not aware of the DCF to its parent. Response 1.03 (s) “Trans Mountain did not inform the Conference Board of the cash flow distributions to its U.S. parent. However, it would not change the results. Please see the response to Allan R IR No. 1.03h.”</p> <p>The Board is requested to order Trans Mountain to inform its consultant of its likely DCF obligations on an annual basis and determine if the consultant confirms that this does not change or affect the results of the model. In the absence of oral cross-examination, these important tests of reliability, credibility, accountability and weight are extremely difficult to undertake.</p>

IR	Request	Answer	Request for Board Ruling
1.03 (II)	<p>With respect to Kinder Morgan Canada, Trans Mountain Pipeline ULC, Trans Mountain Pipeline LP and any other entities operating or registered in Canada related to the Trans Mountain pipeline system that may have an obligation related to federal and provincial corporate taxes and/or withholding taxes, please provide for 2005 - 2013 and budget for 2014:</p> <ol style="list-style-type: none"> <li>1) an identification of each Canadian entity that is subject to corporate taxation or withholding tax;</li> <li>2) a detailed discussion of the corporate tax treatment of the entity in Canada;</li> <li>3) a detailed discussion of the tax treatment of interest, dividends, and other forms of trans-border cash flow as it relates to the Canada US Tax Treaty including treaty exemptions and rates as compared to the withholding rates that would be applicable in Canada on similar cash distributions to the US but for the existence of the tax treaty;</li> <li>4) scheduled federal and provincial corporate tax rates generally applicable to the type of entity identified in (II) 1 above;</li> <li>5) the effective federal and provincial tax rates as they relate to the entity's net earnings;</li> <li>6) the amount of federal and provincial book or accounting taxes (if book and accounting are considered the same, but if not, please provide both);</li> <li>7) the amount of federal corporate cash tax representing the federal corporate income tax actually paid (refunded) each year;</li> <li>8) the amount of provincial corporate cash tax representing the provincial income tax actually paid (refunded), by province, each year.</li> </ol>	<p>Under Canadian tax law, partnerships are not themselves taxpayers, but instead are required to file an information return with the Canada Revenue Agency which reports the partnership's income for the year and the proportionate allocation thereof to its partners. Both partners of Trans Mountain Pipeline LP, (being Trans Mountain Pipeline ULC and Kinder Morgan Cochin ULC) are Canadian corporations. As such, they report their proportionate share of the income allocated by Trans Mountain Pipeline LP for Canadian tax purposes, and are subject to Canadian income tax on that income in accordance with the rules generally applicable to Canadian corporations. Canadian resident corporations, Trans Mountain Pipeline ULC and Kinder Morgan Cochin ULC are also liable to withhold tax on cross border payments on the same basis as any other form of Canadian corporation.</p> <p>The balance of this information request, (including without limitation the request for a treatise on the relief from double taxation provided under Canada's tax treaties), is not relevant to one or more of the issues on the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</p>	<p>The tax treatment of all entities related to the Trans Mountain expansion project is fundamental to the List of Issues, in particular Issues #1 - #4 and #8 because the Proponent has made them relevant in the Application, particularly Volume 2, presented for the Panel's review and consideration. The Proponent has claimed fiscal benefits from the Project that Trans Mountain does not pay and it is imperative that the reliability of the fiscal benefits, that arise in the first instance from the operation of the project, are fully and adequately tested. Trans Mountain has set the standard as to what is relevant in the public interest when it claims it will pay an effective tax rate of 25% when it appears from other information the company has not historically (since purchased by Kinder Morgan) contributed corporate taxes any where close to that effective tax rate.</p> <p>If the Board does not rule that the likely fiscal contribution of the Proponent, based on current tax treatment, is within the List of Issues, then all evidence that speaks to the benefit of corporate tax contributions from Trans Mountain's expansion are requested to be removed from the Application because Trans Mountain claims that they are outside the relevancy of the List of Issues.</p>



IR	Request	Answer	Request for Board Ruling
1.04 (a)	<p><b>GOVERNANCE, DECISION MAKING, ACCOUNTABILITY AND CONTROL</b></p> <p>a) Please confirm that: 1) the general partner of KMP is Kinder Morgan G.P. Inc. (KMGP); 2) through a Delegation of Control Agreement, the Board of Directors of Kinder Morgan Management LLC (KMR) manages and controls the business and affairs of KMP; 3) through a Delegation of Control Agreement, the Board of Directors of Kinder Morgan Management LLC (KMR) performs the Board functions for KMP. 4) the Board members of KMR are: Richard Kinder, Chairman and CEO, KMGP, Steven Kean, President and COO, KMGP, Gary Hultquist, Principal NewCap Partners Inc., Ted Gardner, Managing Partner, Solverhawk Capital Partners, LLC, and Perry Waughtal, Limited Partner and Chairman, Songy Partners Limited; 5) KMP does not have officers or directors except through its relationship to KMR; 6) KMC does not have officers or directors except through its relationship to KMR through KMP; 7) Trans Mountain ULC does not have directors or officers except through its relationship to KMR through KMP; 8) Trans Mountain Pipeline LP does not have directors or officers except through its relationship to KMR through KMP. If unable to confirm any or all of the requests in a) 1-8, please provide an explanation that addresses the Board structure for KMP and the reporting relationship of the Trans Mountain related Canadian entities to the Board of KMP including an identification of any board or executive committees that exist in Canada, the names and domicile of the members of those boards and/or committees, and whether they are a Kinder Morgan employee, member of a Kinder Morgan Board in the US or independent board members.</p>	<p>a) 1) Confirmed.</p> <p>2) Confirmed.</p> <p>3) Confirmed.</p> <p>4) Confirmed (Note: Ted Gartner, Managing Partner, Silverhawk Capital Partners, LLC).</p> <p>5) Not confirmed. In addition to officers and directors through its relationship to KMR, KMP's general partner, KMGP, has officers and directors.</p> <p>6) Not confirmed. 7) Not confirmed. 8) Not confirmed.</p> <p>Kinder Morgan Canada Inc. has a Board of Directors and appointed Officers all of whom are Kinder Morgan employees and the majority of which are Canadian residents. Trans Mountain Pipeline ULC has a Board of Directors and appointed Officers all of whom are Kinder Morgan employees and the majority of which are Canadian residents. Trans Mountain Pipeline ULC, as general partner, has the authority to manage and control the business of Trans Mountain Pipeline L.P. and as such the Board of Directors and appointed Officers of Trans Mountain Pipeline ULC act on behalf of Trans Mountain Pipeline L.P. <b>The balance of the information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b></p>	<p>Governance, Decision Making, Accountability and Control is fundamental to financial viability of major capital projects intended for operation over decades. The Proponent confirmed that Kinder Morgan Management LLC (KMR) performs the Board function for KMP—the US based Master Limited Partnership that controls Trans Mountain's assets through a complex corporate structures. Trans Mountain was asked to provide an explanation of the Board structure for KMP and the reporting relationships of Canadian entities related to Trans Mountain to the Board of KMP, but would not do so.</p> <p>KMC has a Board of Directors and appointed officers composed of Kinder Morgan employees, but did not provide names. Employee board representation means the regulatory paperwork is complete, not that the Board or executive has decision making power over capital expansions and other important decisions such as financing, corporate organization, design and purchase of insurance programs, etc. Trans Mountain Pipeline ULC as general partner manages the <b>operation</b> of Trans Mountain assets. Important decisions are made in Texas.</p> <p>Kinder Morgan Canada Inc, and the general partner Trans Mountain Pipeline ULC are effectively no more than operation project managers. The senior employee in Canada, Ian Anderson, is not an officer of Kinder Morgan nor is he a member of the Board. He reports to Richard Kinder.</p> <p>The Board needs to understand the governance structure and decision making authority to consider whether this is in the public interest.</p>

IR	Request	Answer	Request for Board Ruling
1.04 (c)	Reference (v) states that “All management powers over the business affairs of the Company (KMR) are vested exclusively in the Board, and subject to the direction of the Board, the officers of the Company.” Please provide a list and job titles of the officers of the “Company” (KMR) and the officers of KMI.	<b>The information request is not relevant to one or more of the issues on the National Energy Board’s List of Issues for the Trans Mountain Expansion Project.</b>	<p>The Board needs to know who is making the decisions and what their affiliations are to adequately protect the public interest.</p> <p>The financial exposure Kinder Morgan faces because of its complex structure is significant.</p> <p>By Kinder Morgan’s own admission in its annual report, but for its corporate structure, Trans Mountain’s owner KMP would be considered an investment company.</p> <p>“If in the future KMR and the general partner cease to manage and control KMP, with respect to KMP and EPB’s general partner ceases to manage and control EPB either limited partnership may be deemed to be an investment company under the Investment Company Act of 1940. In that case, KMP and/or EPB would either have to register as an investment company under the Investment Company Act, obtain exemptive relief from the SEC or modify their organizational structure or contractual rights so as to fall outside the definition of an investment company. Registering as an investment company could, among other things, materially limit our ability to engage in transactions with affiliates, including the purchase and sale of certain securities or other property to or from our affiliates, restrict our ability to borrow funds or engage in other transactions involving leverage and require us to add additional directors who are independent of us and our affiliates, and could adversely affect the price of our common stock.” KMI 2013 Annual Report page 51 .</p>

IR	Request	Answer	Request for Board Ruling
1.04 (f)	Please provide an estimate of capital expenditures or allocations contemplated by the Kinder Morgan “family” from 2014-2018 and the relative role the Trans Mountain Expansion Project plays in this capital expenditure plan.	<b>The information request is not relevant to one or more of the issues identified in the National Energy Board’s List of Issues for the Trans Mountain Expansion Project. However, Kinder Morgan’s published project backlog is available on the Company’s website.</b>	<p>The Trans Mountain expansion project according to the Kinder Morgan website represents the most significant capital expenditure in the Kinder Morgan family of capital spending programs over the period 2014 - 2018. Trans Mountain has confirmed in IR Response 1.04 (g) that “Kinder Morgan Inc. considers a \$5.4 billion expenditure related to the Trans Mountain Expansion Project to represent a project of “significant capital allocation and expenditure”.</p> <p>It is requested that the Board rule on whether Trans Mountain has accurately reflected the request to consider Trans Mountain’s capital requirements within the framework of the Kinder Morgan group of companies and competing claims as not being reflective of the List of Issues, in particular Issue #2, Financial Feasibility of the project. The decision to proceed with the project, the access to financing, and the business risk rests with KMI, KMR and KMP and thus an examination of all capital spending, its relative importance to the financial strength of the US parent(s), and any other financial consideration should be relevant in the determination of the public interest and fall within the scope of the List of Issues #3 and #4.</p> <p>If the Board does not agree, then any and all references made by the Proponent in its application regarding the strength and sophistication of its owner should be removed from the Hearing record. The risks the owner represents should be as reviewable as the benefits Trans Mountain claims exists because of its US based owner(s).</p>

IR	Request	Answer	Request for Board Ruling
1.04 (h)	<p>Please identify which Kinder Morgan Board of Directors have the authority and responsibility for decision making for Trans Mountain related to:</p> <ol style="list-style-type: none"> <li>1) changes to corporate structure;</li> <li>2) the transfer of assets between entities;</li> <li>3) the purchase or sale of assets;</li> <li>4) the investment decision for capital expansions such as contemplated in the Application; and</li> <li>5) the sourcing of equity and debt required to finance the investment decision such as contemplated in the Application.</li> </ol> <p>Please explain the corporate governance process relied on in each of (h)1-5 and reference the information provided in a) as relevant.</p>	<p><b>The information request is not relevant to one or more of the issues on the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b></p>	<p>Please see 1.04 (f) above.</p>

IR	Request	Answer	Request for Board Ruling
1.04 (i)	Please identify which Kinder Morgan Board approved the planned Trans Mountain expansion and which Kinder Morgan Board has ultimate responsibility for sourcing debt and equity financing for the project.	<b>As indicated in Application, Volume 2, “Financing will be arranged by Trans Mountain’s Parent company KMP.” The KMP Board will approve the Project.</b>	<p>Although Trans Mountain has answered the question and provides a refreshing alternative to claiming the request is outside the List of Issues, this answer is being brought to the Board's attention as further evidence as to why a number of the requests related of corporate governance and decision making need to be provided.</p> <p>The Kinder Morgan Board (KMP) has not approved the project... Trans Mountain says “The KMP Board “will” approve the Project.</p> <p>It is questionable as to why the public interest should be dragged through this extensive process if the corporate decision makers regarding investment in the expansion and the endorsement of the filed Application have not yet given it formal corporate Board approval.</p> <p>By evading direct questions in IR 1.01 and 1.04, Trans Mountain appears to have been able to avoid being clear about the corporate authorities granted the expansion project.</p>

IR	Request	Answer	Request for Board Ruling
1.04 (l)	<p>Please provide a detailed employee organization chart for KMC that identifies the number of full-time permanent employees and their job functions. Please include reporting lines and if any of the job functions at KMC require a reporting relationship with KMR or KMI Corporate Officers, or their staff, please identify. For example, please identify if there is a reporting relationship between KMC communications staff and the V.P. of Communications and Public Affairs at KMR or KMI.</p>	<p>Kinder Morgan Canada Inc. employs over 400 Canadians who work in a variety of functions from field operations personnel, shared services such as finance, procurement, information technology and human resources up to and including a Canadian executive team. These employees provide support to the Canadian businesses owned by Kinder Morgan including the Trans Mountain pipeline. <b>The detailed employee organization chart for KMC will not be provided as it is not relevant to one or more of the issues on the National Energy Board’s List of Issues for the Trans Mountain Expansion Project.</b></p>	<p>Kinder Morgan Canada has represented itself as the operator of the Trans Mountain pipeline but has responsibility for other operating activities. It is important that the Board understand the staff complement, skills and abilities that are dedicated to the safe and reliable operation of the expanded system.</p> <p>As well, Trans Mountain has claimed that there will be new permanent employment related to the expansion, but these jobs could be filled by existing Trans Mountain employees and although called “Full time equivalent”, not actually lead to that level of “new” employment.</p> <p>If Trans Mountain wishes to provide a summary corporate employee organization chart, with the first two tiers of management identified by name and job function, with the other boxes summarized as is sometimes standard in human resources reporting, that would be acceptable.</p>

IR	Request	Answer	Request for Board Ruling
1.04 (m)	<p>Please explain how the management structure for KMC is established to undertake corporate functions and the level of support provided by Corporate Office functions at KMR or KMI for each of the following corporate functions located in the US:</p> <ol style="list-style-type: none"> <li>1) Treasury</li> <li>2) Controller</li> <li>3) Audit</li> <li>4) Internal Audit</li> <li>5) Finance</li> <li>6) Legal Counsel</li> <li>7) Information Technology</li> <li>8) Tax</li> <li>9) Communications and Public Affairs</li> <li>10) Human Resources</li> </ol>	<p><b>The information request is not relevant to one or more of the issues on the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b></p>	<p>The operation of KMC appears to be driven from Houston with corporate head office functions delivered into KMC in Calgary when and as needed. It is important that the Board understand the depth of involvement the head office in Houston has in the running of the operator as this speaks to the corporate culture of an entity and the degree to which the Canadian public interest will be upheld and respected over the life of the project, should it proceed.</p> <p>The head office of Trans Mountain used to exist in Canada, the shares of Teresen were traded on the Toronto stock exchange, the tax liabilities were relatively greater, and high ranking executive job opportunities were greater than that afforded by the current ownership and decision making structure. These changes, although legal, are not necessarily transparent or understood with respect to the future operations and decision making of the expanded system, and how these realities relate to the Canadian public interest.</p>

IR	Request	Answer	Request for Board Ruling
1.05 (i)	<p><b>INSURANCE</b></p> <p>Please provide an annual history of the general liability coverage limits and related deductibles Kinder Morgan has maintained for the Trans Mountain Pipeline system since 2005, including a description of the insurance program in place, including a discussion of the pollution liability limits and deductibles in place when KMI purchased the shares of Teresen Inc.</p>	<p><b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b></p>	<p>Kinder Morgan, not Trans Mountain, determines the insurance program for spill liability related to the existing system and will determine the program in the future for the expanded system. In an effort to understand the level of risk tolerance in the corporation and how that might change over time a history of the practice engaged in by Kinder Morgan since it took ownership of the system is required.</p> <p>It is not clear why Trans Mountain would resist answering this question if the company understands that the risk of the spills is of serious concern to the public. A more fulsome understanding how Kinder Morgan reflects its understanding of spill risk in its insurance program will speak to the potential socio-economic impact of the project as well as its financial viability, since Trans Mountain's structure—along with the complex related entities—protects the company from financial exposure, but does not necessarily protect the Canadian public from exposure. The insurance questions relate to List of Issues #2, #3 and #4.</p>



IR	Request	Answer	Request for Board Ruling
1.05 (j)	Please explain the extent of the coverage for each of the years provided in (i) above, including an identification as to whether the insurance program was solely for the purpose of the Trans Mountain assets, the assets operated by KMC which covered all Canadian assets, or the entire Kinder Morgan family, which would include US assets. With respect to the program in place when KMI purchased Teresen, please answer according to the corporate structure in place when just prior to the purchase.	<b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b>	Please see 1.05 (i) above.  The insurance history of Kinder Morgan and that provided to Trans Mountain directly or indirectly is as relevant to the List of Issues as oil spill statistics and cost of clean up and damage claims.  Corporate culture regarding risk management as reflected in past insurance practices is an important aspect in understanding the corporate risk Kinder Morgan poses to the Canadian public. There is the risk of the product, but there is also the systemic or corporate risk of the company managing the transport of the product. Historical behaviours and decision making can shed light on this difficult factor.
1.05 (k)	If Kinder Morgan is required by third parties to hold private sector, arms length insurance for TMPL, please explain which parties require insurance protection, (e.g., lenders, shippers), the nature of that protection, and how much is required as part of any commercial terms.	<b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b>	It is unclear why Trans Mountain would be unwilling to answer this obvious and important question. It speaks to potential perceived risk of business entities and provides an indication of reasons why Kinder Morgan may hold certain coverage, but if those relationships change, may elect to self insure and increase risk to the Canadian public and taxpayers.
1.05 (u)	Does Kinder Morgan currently provide any form of parental guarantee for any or all pollution related losses incurred by any of its pipelines, pipeline systems, Jones Act tankers, or other assets in the US? If so, please provide details including the entity that provides the guarantee.	<b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b>	It is unclear why Trans Mountain would not consider it within the Board's List of Issues to determine if the company has engaged in similar activities in other areas of its operations and simply does not provide the guarantee to Trans Mountain because it is not required to. This question speaks List of Issues #8, potential conditions.

IR	Request	Answer	Request for Board Ruling
1.05 (nn)	Kinder Morgan Canada LLC is listed as a subsidiary of KMI, but Kinder Morgan Canada Inc. (KMC) is the operator of Trans Mountain Pipeline ULC, the general partner of Trans Mountain Pipeline LP. Please explain the relationship of KMC LLC to KMC Inc. or any other Kinder Morgan entity registered in Canada.	<b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b>	It is not clear what the role and purpose of Kinder Morgan Canada LLC is. If Trans Mountain had provided a corporate structure and commentary that explained the role and purpose of each entity as requested in 1.02, this question would likely have been addressed more fully.  The role and purpose of Kinder Morgan Canada LLC is important and the Proponent is respectfully asked to address this question when it fulfills the corporate structure request, if the Board so elects to order.
1.6 (b)	<b>FINANCIAL CAPACITY</b>  Please explain the relationship between Kinder Morgan Inc., a US company traded on the New York Stock Exchange and Trans Mountain Pipeline ULC and why, if KMI approached the Alberta government to discuss financing for the expansion project, it was KMI and not KMP as identified in reference (i).	Successful financing for the Project is not dependent on participation by Alberta or any other government. No arrangements with Alberta or any governments relevant to financing of the Project are being advanced by Trans Mountain or form any part of the Project. <b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b>	Trans Mountain is not arranging financing for the project through arms-length arrangements so obviously, as stated in the answer, no arrangements with any party, other than its US based owner, are contemplated by Trans Mountain. This reality necessitates a fulsome review of KMP and because of its relationships with KMI and KMR, all entities, to ensure representations respecting financial capacity and credit quality of the US entities are reliable and accurate.

IR	Request	Answer	Request for Board Ruling
1.06 (b) cnt'd			<p>Trans Mountain states in Volume 2, Section 3.2.2 that “ Financing will be arranged by Trans Mountain’s parent company KMP” As KMI (KMP’s partial owner) explains in its 2013 Annual Report, “Consistent with the terms of KMP’s and EPB’s partnership agreements, KMP and EPB distribute most of the cash generated by their operations. As a result, they have relied on external financing sources, including commercial borrowings and issuances of debt and equity securities, to fund acquisition and growth capital expenditures. However, to the extent our (KMI’s) limited partnerships are unable to continue to finance growth externally; their cash distribution policy will significantly impair their ability to grow. KMP and/or EPB may need new capital to finance these activities. Limitations on access to capital, whether due to tightened capital markets, more expensive capital or otherwise, will impair their ability to execute this strategy” and secure financing for Trans Mountain’s expansion.</p> <p>The List of Issues #2 and #3 requires a full and accurate testing of KMP’s financial soundness since the financing is to be sourced through that corporate entity.</p>
1.6 (c)	Please confirm the dates when talks were held between Kinder Morgan representatives and the Alberta government to discuss Trans Mountain expansion project financing arrangements.	<p><b>Please refer to Allan R IR No. 1.06b.</b></p> <p><b>The information request is not relevant to one or more of the issues identified in the National Energy Board’s List of Issues for the Trans Mountain Expansion Project.</b></p>	It is unclear why any and all questions directly related to Kinder Morgan’s ability to finance the project would not fall within the List of Issues, in particular #2, #3, #4 and perhaps #8.

IR	Request	Answer	Request for Board Ruling
1.6 (e)	Did Trans Mountain advise the Panel during the Part IV Toll Hearings that KMI (or any Kinder Morgan affiliate) intended to, was in talks with, or had discussed, the possibility of Alberta government support of, or involvement in, financing for the project? If not, why not?	<p><b>Please refer to Allan R IR No. 1.06b.</b></p> <p><b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b></p>	It is unclear why any and all questions directly related to Kinder Morgan's ability to finance the project would not fall within the List of Issues, in particular #2, #3, #4 and perhaps #8
1.6 (f)	Did KMI or any entity of the Kinder Morgan family, including KMC approach the British Columbia government for financial support, assistance, investment, participation of any kind, or any form of subsidies or preferential treatment, within the past five years or has plans to do so within the next five years. Please include crown corporations in the definition of government.	<p><b>Please refer to Allan R IR No. 1.06b.</b></p> <p><b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b></p>	It is unclear why any and all questions directly related to Kinder Morgan's ability to finance the project would not fall within the List of Issues, in particular #2, #3, #4 and perhaps #8
1.6 (g)	If yes to (f) above, please provide the dates of the meetings, the substance of the discussions, amount of support sought, and what agreements, if any, were reached, including plans or understandings to reach agreements in the future.	<p><b>Please refer to Allan R IR No. 1.06b.</b></p> <p><b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b></p>	It is unclear why any and all questions directly related to Kinder Morgan's ability to finance the project would not fall within the List of Issues, in particular #2, #3, #4 and perhaps #8
1.6 (h)	Did KMI or any entity of the Kinder Morgan family, including KMC approach the Federal Government for financial support, assistance, investment, participation of any kind, or any form of subsidies or preferential treatment, within the past five years or has plans to do so within the next five years. Please include crown corporations in the definition of government.	<p><b>Please refer to Allan R IR No. 1.06b.</b></p> <p><b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b></p>	It is unclear why any and all questions directly related to Kinder Morgan's ability to finance the project would not fall within the List of Issues, in particular #2, #3, #4 and perhaps #8

IR	Request	Answer	Request for Board Ruling
1.6 (i)	If yes to (h) above, please provide the dates of the meetings, the substance of the discussions, amount of support sought, and what agreements, if any, were reached, including plans or understandings to reach agreements in the future.	<p><b>Please refer to Allan R IR No. 1.06b.</b></p> <p><b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b></p>	It is unclear why any and all questions directly related to Kinder Morgan's ability to finance the project would not fall within the List of Issues, in particular #2, #3, #4 and perhaps #8
1.6 (j)	Is the Trans Mountain Expansion Project viable without government support or government assistance with project financing options?	<p><b>Please refer to Allan R IR No. 1.06b.</b></p> <p>Successful financing for the Project is not dependent on participation by Alberta or any other government. No arrangements with Alberta or any governments relevant to financing of the Project are being advanced by Trans Mountain or form any part of the Project.</p> <p><b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b></p>	<p>The Panel considers only the evidence on the record and Trans Mountain would like the Panel to sign-off on Trans Mountain's claim that KMP "will" finance the project by providing 6 paragraphs of discussion and a consolidated balance sheet that presents year end 2012 and third quarter 2013 figures with no supporting notes or risks identified (Volume 2, Section 3.2.2.) From a financial analytical perspective, Trans Mountain is frustrating the Board's ability to understand financial issues and concepts and resisting legitimate attempts to get adequate information on the record.</p> <p>If the Panel supports Trans Mountain's claim that testing KMP's financial viability is not relevant to the List of Issues, then Trans Mountain be requested to remove from its Application any and all reference to Kinder Morgan's size, financial performance, and in particular, Volume 2, Section 3.2.2 and Volume 2, Appendix C.</p>

IR	Request	Answer	Request for Board Ruling
1.6 (k)	f yes to (j) above, why was government support or assistance with project financing options sought?	<p><b>Please refer to Allan R IR No. 1.06b.</b></p> <p><b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b></p>	It is unclear why any and all questions directly related to Kinder Morgan's ability to finance the project would not fall within the List of Issues, in particular #2, #3, #4 and perhaps #8
1.6 (l)	Please explain in Trans Mountain's words what is meant by project financing options. If Trans Mountain was not party to the discussions the government of Alberta has confirmed took place, please obtain the answer from the appropriate Kinder Morgan executive and disclose which party in the Kinder Morgan family is responsible for the response provided.	<p><b>Please refer to Allan R IR No. 1.06b.</b></p> <p><b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b></p>	It is unclear why any and all questions directly related to Kinder Morgan's ability to finance the project would not fall within the List of Issues, in particular #2, #3, #4 and perhaps #8
1.6 (m)	Please confirm that the US Master Limited Partnership's (KMP) average rate of return on investment (ROI) related to Kinder Morgan Canada, for the years 2007 – 2013 was 13.5% and provide the annual rate of return from 2005 - 2013. If not confirmed, please provide the average rate of return on investment over the period and source for the information.	<p><b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b></p>	It is unclear why any and all questions directly related to Kinder Morgan's ability to finance the project would not fall within the List of Issues, in particular #2, #3, #4 and perhaps #8

IR	Request	Answer	Request for Board Ruling
1.6 (n)	Please confirm that debt costs, or borrowing costs, are reflected in part in the credit ratings given by credit rating services and explain Kinder Morgan's understanding of how its debt rating affects its access to capital. If KMP or KMI has the responsibility for sourcing debt on behalf of Trans Mountain, please have the appropriate Kinder Morgan US based executive field the question and identify who is responsible for the answer.	<b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b>	Trans Mountain states that "Kinder Morgan Energy Partners, L.P.'s long-term corporate debt credit rating is BBB (stable) at Standard & Poor's Ratings Services, Baa2 (stable) at Moody's Investors Service, Inc. and BBB (stable) at Fitch, Inc." in Volume 2, Section 3.2.2 but is unwilling to answer questions related to its debt rating.  If the Panel agrees with Trans Mountain's statement that the request is not relevant, then please order Trans Mountain to remove any and all references to its credit rating from its Application, otherwise please order Trans Mountain to fully answer the question.
1.6 (o)	If Kinder Morgan does not confirm that debt ratings impact the cost of debt, please explain the role and purpose of credit rating agencies as they relate to the pricing of debt instruments, particularly the debt sourcing contemplated by KMP or KMI for Trans Mountain's expansion.	<b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b>	Trans Mountain states that "Kinder Morgan Energy Partners, L.P.'s long-term corporate debt credit rating is BBB (stable) at Standard & Poor's Ratings Services, Baa2 (stable) at Moody's Investors Service, Inc. and BBB (stable) at Fitch, Inc." in Volume 2, Section 3.2.2 but is unwilling to answer questions related to its debt rating.  If the Panel agrees with Trans Mountain's statement that the request is not relevant, then please order Trans Mountain to remove any and all references to its credit rating from its Application, otherwise please order Trans Mountain to fully answer the question.
1.6 (p)	Please confirm that, should the Alberta government, or any party with a higher credit rating, borrow on behalf of the Trans Mountain Expansion Project, Kinder Morgan would have the reasonable expectation that its cost of debt would be lower than if Kinder Morgan raised debt financing directly.	<b>Please refer to Allan R IR No. 1.06b.</b>  <b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b>	It is unclear why any and all questions directly related to Kinder Morgan's ability to finance the project would not fall within the List of Issues, in particular #2, #3, #4 and perhaps #8

IR	Request	Answer	Request for Board Ruling
1.6 (q)	Please confirm that if Kinder Morgan raised debt through the Alberta government this would effectively lower its overall cost of debt for its family of companies and increase its cash flow, all other factors constant.	<p><b>Please refer to Allan R IR No. 1.06b.</b></p> <p><b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b></p>	It is unclear why any and all questions directly related to Kinder Morgan's ability to finance the project would not fall within the List of Issues, in particular #2, #3, #4 and perhaps #8
1.6 (r)	Please confirm that any reduced interest charges for the Trans Mountain Expansion Project due to Kinder Morgan accessing debt financing through the strength of the Alberta government's credit rating, given Kinder Morgan's predominantly US activities, could mean the indirect support of Kinder Morgan's US based activities by the government of Alberta. If not confirmed, please explain.	<p><b>Please refer to Allan R IR No. 1.06b.</b></p> <p><b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b></p>	It is unclear why any and all questions directly related to Kinder Morgan's ability to finance the project would not fall within the List of Issues, in particular #2, #3, #4 and perhaps #8
1.6 (s)	What were the nature of financing arrangements discussed with the Government of Alberta and how much financial support was KMI (or any of the Kinder Morgan family of companies) interested in obtaining for the Trans Mountain Expansion Project from the Alberta government? Please identify which company was represented in any and all discussions and which Kinder Morgan employee has addressed this question.	<p><b>Please refer to Allan R IR No. 1.06a and Allan R IR No. 1.06b.</b></p> <p><b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b></p>	It is unclear why any and all questions directly related to Kinder Morgan's ability to finance the project would not fall within the List of Issues, in particular #2, #3, #4 and perhaps #8



IR	Request	Answer	Request for Board Ruling
1.6 (t)	If financing for the Trans Mountain Expansion Project is to be arranged by KMP as stated in reference (iv), and KMI is confirmed as having approached the Alberta government, why was KMI seeking financing for the project from the Alberta government?	<p><b>Please refer to Allan R IR No. 1.06a and Allan R IR No. 1.06b.</b></p> <p><b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b></p>	It is unclear why any and all questions directly related to Kinder Morgan's ability to finance the project would not fall within the List of Issues, in particular #2, #3, #4 and perhaps #8
1.06 (u)	Please confirm that representations in Canada, undertaken by KMI and/or KMP on behalf of Trans Mountain Pipelines ULC, Kinder Morgan Canada, and/or Trans Mountain Pipeline LP are deemed to be expenses incurred by the US company(s) on behalf of the expansion project. If not, please explain how KMI or KMP recover costs related to sourcing debt or equity financing.	<p><b>Not confirmed and the information request is not relevant to one or more of the issues on the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b></p>	<p>Trans Mountain is a captive borrower and relies on KMP to source its financing. There are a variety of ways these types of non-arms length transactions can ensure a flow of funds that avoid income tax and withholding tax in Canada (legal but perhaps not in the public interest or intended by regulators).</p> <p>Cost related to sourcing financing include fees and interest charges. If these fees and interest charges were paid to Canadian based investment or banking firms they would be treated as income and be subject to tax in Canada. They would also increase economic activity in the Canadian financial sector. The unique arrangements of Kinder Morgan's entities suggest such interest and fees are transferred to the US parent and reduce Trans Mountain's tax liability (because they are expenses) with no, or little, offsetting tax benefit realized in Canada because they become revenue to a US owner. The ULC corporate structure would provide assistance in this approach to tax minimization, but Trans Mountain will not address questions related to determining such tax avoidance activity.</p>

IR	Request	Answer	Request for Board Ruling
1.06 (z)	<p>Does KMI have an agreement, or does it in practice, charge fees, basis points, or other forms of remuneration for the successful completion of financing capital projects such as the Trans Mountain Expansion Project. Please explain the compensation arrangements KMI or KMP would generally expect to have for arranging debt or providing equity to the Trans Mountain Expansion Project. That is, please fully explain the fees related to providing financial services to Trans Mountain as distinct from the interest charges on debt or the required return on equity.</p>	<p><b>The information request is not relevant to one or more of the issues identified on the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b></p>	<p>Please see 1.06 (u) above.</p> <p>For all questions in IR 1.06 not answered on the grounds of irrelevancy, the Board is respectfully asked to consider Trans Mountain's endorsement of direct evidence of John Reed where Mr. Reed states, "Section 52 of the NEB Act states that when considering an application for a certificate:</p> <p>[T]he Board shall have regard to all considerations that appear to it to be relevant, and may have regard to the following:</p> <p>(a) the availability of oil, gas or any other commodity to the pipeline; (b) the existence of markets, actual or potential; (c) the economic feasibility of the pipeline; (d) the financial responsibility and financial structure of the applicant, the methods of financing the pipeline and the extent to which Canadians will have an opportunity of participating in the financing, engineering and construction of the pipeline; and</p> <p>(e) any public interest that in the Board's opinion may be affected by the granting or the refusing of the application. In practice, the Board's standard for determining if a project is economically feasible—criterion (c) above—has been the presentation of satisfactory evidence that criteria (a), (b) and (d) above have been met." It is important to note that (c) above is List of Issue #2 in the Hearing Order relevant to this Application.</p>

IR	Request	Answer	Request for Board Ruling
1.06 (ii)	Does Trans Mountain confirm that the evidentiary record of the Part IV Toll Hearing forms part of the evidentiary record of the current hearing? If unable to confirm, please submit all documents related to the Part IV Hearings as evidence to the current Hearing including the Reasons For Decision.	Not confirmed. The hearing record for RH-001-2012 does not form part of the hearing record for OH-001-2014. <b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b>	<p>RH-001-2012 provides a significant source of written evidence, oral cross-examination, and final argument documentation that is germane to the financial capacity and commercial impact of the Expansion Project.</p> <p>Numerous promises were made during RH-001-2012 that issues not addressed there would be examined during the Part III Application hearing. Trans Mountain now appears to be frustrating those commitments with the manner in which information requests are being dismissed.</p> <p>It is respectively requested that the Board adopt the Hearing record from RH-001-2012 so it does form part of the hearing record for OH-001-2014.</p> <p>It is also requested that the Board advise as to the appropriate process for ensuring that relevant portions of other Part IV Hearings related to Trans Mountain and its expansion be placed on the record, as well as relevant portions of other Part III Hearings related to the legacy pipeline and Trans Mountain Pipeline LP's 99.99% unitholder Kinder Morgan Cochin ULC (Nova Scotia).</p>

IR	Request	Answer	Request for Board Ruling
1.07 (d)	<p><b>Input-Output Analysis</b></p> <p>Please provide the names of the companies who have committed to TSA's to import condensate into Canada on the Cochin pipeline once reversed.</p>	<p><b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b></p>	<p>Trans Mountain's expansion is intended to transport heavy oil from Alberta's tar sands. Because bitumen is dense, like tar or wet cement it requires diluent in order to flow down a pipeline. The diluent of choice is condensate but Canada produces an insufficient quantity and needs to import it from the US. Kinder Morgan owns Cochin and Cochin is the 99.99% L.P. unit holder of Trans Mountain Pipeline LP.</p> <p>It is very likely that the Trans Mountain expansion project is only about 70% an oil sands export project and 30% a Kinder Morgan US condensate export strategy to get US condensate to Asia and other markets. (Based on the average blending ratio).</p> <p>Unless Trans Mountain answers any and all questions related to its Cochin pipeline and the role of imported condensate in the Trans Mountain application, the Board will not be able to assess the role US condensate imports play in the Trans Mountain pipeline proposal.</p>
1.07 (e)	<p>Please confirm that the capital cost of the Cochin reversal is \$260 million. If not confirmed, please provide the current capital cost for the project, identify the currency, as well as indicate the proportion of the capital cost estimated to be incurred in Canada.</p>	<p><b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b></p>	<p>Please see comments to the Board in 1.07 (d) above.</p>

IR	Request	Answer	Request for Board Ruling
1.07 (g)	Please confirm the toll rates paid to import condensate for diluent blending purposes are an expense borne by heavy oil producers either directly when the purchase is made in the US market or indirectly in the price paid is determined in the Edmonton market. If not confirmed, please provide Trans Mountain's understanding of the impact of tolls related to condensate imports on oil producers earnings.	<b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b>	Please see comments to the Board in 1.07 (d) above.
1.07 (h)	Please confirm the per barrel cost for committed shippers on the Cochin condensate pipeline is currently \$4.95 per barrel. If confirmed, please specify if this is in US or Canadian dollars and provide forecast toll rates on Cochin for 2015 - 2037. If not confirmed, please provide, and identify the currency the toll rates are quoted in for both the US and Canadian portion of the Cochin line, the price per barrel a heavy oil producer could expect to pay to import condensate along Cochin in 2014 and provide Kinder Morgan's forecast of Cochin toll rates from 2015 - 2037.	<b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b>	Please see comments to the Board in 1.07 (d) above.
1.07 (m)	Please provide forecast tables that identify by year the supply of domestic condensate, domestic condensate demand, and import volumes required from 2014 - 2037.	<b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b>	Please see comments to the Board in 1.07 (d) above.

IR	Request	Answer	Request for Board Ruling
1.07 (x)	Please provide a ratio for condensate imports versus domestic condensate production in 2009.	<b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b>	<p>Please see comments to the Board in 1.07 (d) above.</p> <p>The Board should also be aware that Input-Output models are only capable of dealing with the quality of the modellers decisions when determining the input or "shock". Trans Mountain's expert has relied on gross revenues from the expansion without due consideration to the transport costs and relative costs of importing condensate to facilitate the exports.</p> <p>If Trans Mountain is unwilling to acknowledge the economic impact of condensate imports in a growing condensate import dependency environment, then the Proponent must exclude any reliance on condensate to ship heavy oil and thus has no heavy oil to ship. If the Panel agrees with Trans Mountain's exclusion of the transport cost of condensate on the producers (and leakage from the Canadian economy when for tolls paid to import condensate), as well as the impact on the balance of payments (and the distortion of the Input-Output model matrix this will create over time), then Volume 2, Appendix B and C must be removed from the Application as well as any conclusion reached based on those volumes.</p>
1.07 (y)	Please provide a ratio for bitumen production to SCO production for 2009.	<b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b>	<p>Please see comments to the Board in 1.07 (d) above.</p> <p>Please see comments to the Board in 1.07(x) above.</p>

IR	Request	Answer	Request for Board Ruling
1.07 (z)	Please provide a ratio, based on the evidence provided in reference (vi) for condensate imports versus domestic production in 2018 and 2037.	<b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b>	Please see comments to the Board in 1.07 (d) above.  Please see comments to the Board in 1.07(x) above.
1.07 (aa)	Please provide a ratio based on reference (vi) for bitumen production to SCO for 2018 and 2037.	<b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b>	Please see comments to the Board in 1.07 (d) above.  Please see comments to the Board in 1.07(x) above.
1.07 (ee)	Please provide on an annual basis, the volume of condensate demand in barrels per day from 2010 - 2013 and forecast to 2037, the proportion produced domestically and the proportion imported.	<b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b>	Please see comments to the Board in 1.07 (d) above.  Please see comments to the Board in 1.07(x) above.
1.07 (ff)	Please confirm that the Cochin reversal was predicated on a growing demand for condensate for diluent blending purposes for heavy oil pipeline export and thus the financial success of the Cochin reversal rests in part on the approval of the Expansion project. If not, please fully explain.	<b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b>	Please see comments to the Board in 1.07 (d) above.  Please see comments to the Board in 1.07(x) above.
1.07 (tt)	Please provide average prices for condensate in Edmonton for 2009 – 2013.	<b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b>	Please see comments to the Board in 1.07 (d) above.  Please see comments to the Board in 1.07(x) above.  The Intervenor is attempting to show that Trans Mountain knows the relative price of condensate is not constant with respect to the price of bitumen and as such a reliance on relative constant prices is not only inconsistent with reality, it is risky business practice and poor judgement.

IR	Request	Answer	Request for Board Ruling
1.07 eee)	<p>Please provide reference (vi) as evidence to this Hearing.</p> <p>vi) Western Canadian Propane, Heavy Oil and Diluent Supply and Demand, Prepared for Kinder Morgan Cochin ULC, S. Kelly and G. Goobie, IHS, August 2012, Report</p>	<p><b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b></p>	<p>Trans Mountain's consultant in this hearing prepared evidence relevant to this hearing in a prior hearing and a testing of the consultant's reliability would be facilitated by the tabling of the report at this hearing.</p> <p>There is no reason that this evidence should not form part of this Hearing record given that the same consultant prepared it, and can speak to it.</p> <p>This question speaks to List of Issues #3 and #4.</p>
1.07 fff	<p>Please provide an update to Table VI-1 Canada Demand for Heavy Crude Diluent (thousand Barrels Per Day) on page 36 of reference (vi) consistent with the assumptions, production and supply tables provided in reference (vii).</p>	<p><b>Reference (vi) does not form part of Trans Mountain's evidence in this proceeding.</b></p>	<p>The unwillingness to provide the evidence by its consultant, (which is NEB filed evidence) on the record at this Hearing enables Trans Mountain to avoid answering questions related to it.</p> <p>This request speaks to List of Issues #3 and #4.</p>



IR	Request	Answer	Request for Board Ruling
1.08 (d)	<p><b>Fiscal Impacts</b></p> <p><b>In addition to the request in NEB IR no 1, (1.09(a))</b> reference (iii) please provide the following for Trans Mountain Pipeline L.P., or for the entity that records revenue and expenses, and files income taxes based on earnings or profits, as the case may be, for each of the first five years following project commissioning including:</p> <p>1) operating cash flow projections that identify net income and other components of cash flow, dividends paid, taxes booked, and taxes paid (refunded); 2) estimated total asset and liability values and their main components.</p>	<p><b>Please see Trans Mountain’s response to NEB IR No. 1.09a.</b></p>	<p>Trans Mountain did not answer the question because its response to the NEB does not provide the requested information. In fact the question specifically asks for information in addition to the NEB IR. N1.09a because the Intervenor had the diligence to ensure the question being asked had not been canvassed by the NEB.</p> <p>This re-direction is not only a waste of time, it shows a disregard for the efforts taken by the Intervenor to ensure redundancy was not included in the request.</p> <p>Please order Trans Mountain to fully answer the request</p> <p>It should be brought to the Board’s attention that Trans Mountain has not included any indication of tax liability in its answer NEB IR No. 1 1.09a.</p> <p>This request speaks to List of Issues #2, #3 and #4.</p>
1.08 (e)	<p>Please provide a table consistent to that provided in reference (iv) for all years that Kinder Morgan or any of its affiliates have operated the Trans Mountain Pipeline (assumed to be briefly in 2005 onwards) and for 2004, and predict those figures for all years from 2015 to 2037. If the budget provided in reference (iv) has been adjusted since Mr. Anderson’s presentation, please include that adjustment. That is, please provide a table equivalent to (and including) reference (iv) that extends from 2005 – 2037 (assuming the first full year of operation of the expansion is 2018).</p>	<p><b>For information regarding Trans Mountain’s financial capacity, please see the response to NEB IR No. 1.09.</b></p>	<p>Trans Mountain did not answer the question because its response to the NEB does not provide the requested information. In fact the question specifically asks for information in addition to the NEB IR. N1.09a because the Intervenor had the diligence to ensure the question being asked had not been canvassed by the NEB.</p> <p>This re-direction is not only a waste of time, it shows a disregard for the efforts taken by the Intervenor to ensure redundancy was not included in the request.</p> <p>Please order Trans Mountain to fully answer the request.</p> <p>This request speaks to List of Issues #2, #3 and #4.</p>

IR	Request	Answer	Request for Board Ruling
1.08 (f)	Please reconcile the cash flow amounts in the table provided in (d) above to the information in (e) if not readily apparent from the data provided.	<b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b>	Request not answered and requires 1.08 d and e in order to do so.  This request speaks to List of Issues #2, #3 and #4.
1.08 (g)	Please confirm that "cash tax" in reference (iv) means tax actually paid, or refunded if negative, and confirm that booked tax means taxes recorded for accounting purposes, but which may never actually be paid and hence provides free cash flow that can be distributed to Trans Mountain's owners.	<b>See the response to Allan R IR No. 1.08e.</b>  <b>1.08e says: For information regarding Trans Mountain's financial capacity, please see the response to NEB IR No. 1.09.</b>	Trans Mountain did not answer the question because its response to the NEB does not provide the requested information or adequately address the issues.  This request speaks to List of Issues #2, #3 and #4.
1.08 (h)	Please provide a percentage breakdown of the cash tax amounts requested in (e) above for the years 2004 - 2014 (budget) that were paid to (or refunded from ) the federal government, and provincial governments broken down further by province.	<b>See the response to Allan R IR No. 1.08e.</b>  <b>1.08e says: For information regarding Trans Mountain's financial capacity, please see the response to NEB IR No. 1.09.</b>	There is no information respecting this issue provided in NEB IR No. 1.09 and thus this request has not been responded to and the re-direct is tantamount to a refusal to answer.  This request speaks to List of Issues #2, #3 and #4.
1.08 (i)	Please provide a copy of the Canadian/US tax treaty, which applies to the distribution of Trans Mountain's cash flow to its parent companies in the US and indicate the relevant sections for determining withholding rates applicable to Trans Mountain or related affiliates as appropriate.	<b>See the response to Allan R IR No. 1.08e.</b>  <b>1.08e says: For information regarding Trans Mountain's financial capacity, please see the response to NEB IR No. 1.09.</b>	There is no information respecting this issue provided in NEB IR No. 1.09 and thus this request has not been responded to and the re-direct is tantamount to a refusal to answer.  This request speaks to List of Issues #2, #3 and #4.

IR	Request	Answer	Request for Board Ruling
1.08 (k)	Please provide copies of the slides presented by Mr. Anderson for each of the annual analyst conferences since Mr. Anderson began making presentations on KMC's or Trans Mountain's behalf.	<b>Mr. Anderson has presented at the Kinder Morgan annual conferences in 2006, 2010- 2014. The presentations for these years are publicly available on Kinder Morgan's web site. Kinder Morgan does not historically retain transcripts or webcast links; however the most recent year is available on the web site.</b>	<p>These slides provide information respecting Trans Mountain's DCF along with cash and book taxes (for selected years).</p> <p>The Board is requested to order Trans Mountain to file these slides as evidence at this hearing to test the evidence related to List of Issues #2 - #4 and support the development of #8.</p>
1.08 (l)	Please provide written copies of each of the transcripts of Mr. Anderson's oral presentations to investor analysts for each of the years (including dates of the sessions) where Mr. Anderson attended.	<b>Please refer to Allan R IR No. 1.8k</b>	<p>These transcripts provide information respecting Trans Mountain's DCF along with cash and book taxes (for selected years) as well as other pertinent information regarding the financial feasibility of the project.</p> <p>The Board is requested to order Trans Mountain to file these transcripts as evidence at this hearing as they were publicly available in order to test the evidence related to List of Issues #2 - #4 and support the development of #8.</p>
1.08 (m)	If Mr. Anderson did not make a presentation to analysts for any of the years subsequent to the purchase of Terasen Inc. shares by KMI in 2005, please indicate which year(s) Mr. Anderson was not present.	<b>Please refer to Allan R IR No. 1.8k</b>	<p>This answer does not address the question and it is information that the Proponent would have access to and be able to provide.</p> <p>This request speaks to List of Issues #2, #3 and #4.</p>

IR	Request	Answer	Request for Board Ruling
1.08 (n)	Please provide relevant transcripts and slides prepared and presented on behalf of KMC or Trans Mountain for the years Mr. Anderson was not in attendance at the analysts conference particularly as they relate to the distributable cash flow from Trans Mountain and taxation or refunds arising from the operation of the system.	<b>Please refer to Allan R IR No. 1.8k</b>	<p>These transcripts provide information respecting Trans Mountain's DCF along with cash and book taxes (for selected years) as well as other pertinent information regarding the financial feasibility of the project.</p> <p>The Board is requested to order Trans Mountain to file these transcripts as evidence at this hearing as they were publicly available in order to test the evidence related to List of Issues #2 - #4 and support the development of #8.</p>
1.09 (i)	<p><b>Crude Oil by Rail</b></p> <p>Please confirm that reference (i), although assuming rail transportation displacement, has not assumed any revenue displacement related to the transportation capacity. If not confirmed, please explain.</p>	<b>The request is not relevant because the revenue to the rail industry was not part of the analysis completed for the IHS report.</b>	<p>Trans Mountain postulates that when its pipeline is complete, all crude oil by rail shipments will be displaced by pipelines at a \$5 per barrel lower rate and thus has applied this transportation cost reduction to all barrels of heavy oil shipped from Alberta.</p> <p>When crude oil by rail is displaced this means a reduction in revenue to rail transport companies. Trans Mountain has claimed the benefit of \$5 per barrel on every barrel produced without recognizing the transportation revenue loss of rail companies that gave rise to the postulated netback increases. This is entirely relevant to the socio-economic impact of the project List of Issues #4 since it is a negative economic impact on the rail sector.</p>

IR	Request	Answer	Request for Board Ruling
1.09 (q)	Please confirm that a Kinder Morgan entity is in a 50/50 joint venture with Imperial Oil to create a unit train facility served directly by CN and CP with between 100,000 to 250,000 bbls/day with an expected in service date of Q4, 2014. Please specify which Kinder Morgan entity is in the JV with Imperial.	<b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b>	<p>The application, Volume 2, Appendix A clearly postulates that crude oil by rail will be displaced when pipelines including Trans Mountain's expansion offer a substitute form of transport.</p> <p>If this is the case, why would Trans Mountain's owner invest, along with one of the long-term committed shippers, Imperial Oil, in expanded crude oil by rail transportation systems?</p> <p>This question is asked to test the logic of Volume 2, Appendix A and is directly relevant to the List of Issues #4.</p>
1.09 (s)	Please explain why Kinder Morgan would invest in crude-by-rail capacity, as explained in reference (ii) if crude-by-rail will be displaced by new pipeline projects.	<b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b>	<p>When asked the question directly as discussed in 1.09 (q) above, Trans Mountain refuses to answer.</p> <p>This question is asked to test the logic of Volume 2, Appendix A and is directly relevant to the List of Issues #4.</p>
1.09 (t)	Please provide a detailed listing of the rail related projects Kinder Morgan is affiliated with in Canada and the US, including year of construction, capacity, as well as a detailed listing of the crude-by-rail capacity expansion projects any of the existing and potential shippers on Trans Mountain are directly or indirectly affiliated with.	<b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b>	<p>This question is asked to test the logic of Volume 2, Appendix A and is directly relevant to the List of Issues #4.</p>

IR	Request	Answer	Request for Board Ruling
1.10 (f)	<p>Please submit as evidence reference (iii) and (iv).</p> <p>ii) IHS CERA Insight Keystone XL Pipeline: No Material Impact on US GHG Emissions, Jackie Forrest and Aaron Brady, August, 5, 2013</p> <p>iii) Trans Mountain Expansion Project Application NEB, RH-001-2012, Direct Evidence of George R. Schink, Revised January 10, 2013, Tab D-1</p>	<p><b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b></p>	<p>There is conflicting evidence prepared by colleagues of Trans Mountain's consultant Steven Kelly and filed by Trans Mountain in prior hearings.</p> <p>Trans Mountain refuses to file this evidence so it can be on the record and referred to as evidence that the Proponent must be accountable for.</p> <p>This request is relevant to List of Issues #2, 3 and 4.</p>
1.10 (m)	<p>Did Trans Mountain consider contracting Dr. Schink to undertake the netback and pricing analysis provided in reference (i)? If not, why not.</p>	<p><b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b></p>	<p>There is conflicting evidence prepared by colleagues of Trans Mountain's consultant Steven Kelly and filed by Trans Mountain in prior hearings.</p> <p>Trans Mountain refuses to file this evidence so it can be on the record and referred to as evidence that the Proponent must be accountable for.</p> <p>This request is relevant to List of Issues #2, 3 and 4.</p>
1.10 (p)	<p>Please explain why Kinder Morgan would invest in a rail terminal facility capable of exporting up to 250,000 barrels per day throughout North America and then not utilize the facilities or capability subsequent to the expansion of the Trans Mountain Pipeline system as concluded in reference (i).</p>	<p><b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b></p>	<p>There is conflicting evidence prepared by colleagues of Trans Mountain's consultant Steven Kelly and filed by Trans Mountain in prior hearings.</p> <p>Trans Mountain refuses to file this evidence so it can be on the record and referred to as evidence that the Proponent must be accountable for.</p> <p>This request is relevant to List of Issues #2, 3 and 4.</p>

IR	Request	Answer	Request for Board Ruling
1.10 (q)	Please confirm the slides in reference (vi) are IHS slides and that the information in them as well as the uncertainty around the role of rail in the future is supported by Trans Mountain. If not, please explain. Please submit the slides as evidence along with the supporting data for the illustrations.	<b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b>	<p>There is conflicting evidence prepared by colleagues of Trans Mountain's consultant Steven Kelly and filed by Trans Mountain in prior hearings.</p> <p>Trans Mountain refuses to file this evidence so it can be on the record and referred to as evidence that the Proponent should be accountable for.</p> <p>This request is relevant to List of Issues #2, 3 and 4.</p>
1.14 (c)	Please confirm that the imports to California from Alaska arrive on tankers subject to the Jones Act and explain the significance of the Jones Act respecting transport of crude by tanker.	<b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b>	<p>The restrictions under the Jones Act lead to different economic consequences and business decisions and have implications for tanker transport demand from the Westridge dock than if the legislation did not exist.</p> <p>Kinder Morgan understands these issues because it recently purchased a number of tankers subject to the Jones Act and has more on order.</p> <p>As an owner of Jones Act tankers Kinder Morgan must ensure that there is a majority of its ownership that rests in US residents hands, thus impacting financial as well as economic List of Issues.</p> <p>These questions deal with List of Issues #2,3,4,5.</p>

IR	Request	Answer	Request for Board Ruling
1.14 (d)	Please explain whether or not crude oil transport by tanker between non-Alaskan ports in the US are subject to the Jones Act and if so, please confirm that transport is more expensive on a per barrel basis than transport on non-Jones Act tankers would be over the same distance.	<b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b>	<p>The restrictions under the Jones Act lead to different economic consequences and business decisions and have implications for tanker transport demand from the Westridge dock than if the legislation did not exist.</p> <p>Kinder Morgan understands these issues because it recently purchased a number of tankers subject to the Jones Act and has more on order.</p> <p>As an owner of Jones Act tankers Kinder Morgan must ensure that there is a majority of its ownership that rests in US residents hands, thus impacting financial as well as economic List of Issues.</p> <p>These questions deal with List of Issues #2,3,4,5.</p>
1.14 (e)	Please explain the difference in tanker transport costs related to an Aframax tanker carrying diluted bitumen from Westridge to California versus an Aframax tanker carrying diluted bitumen from a Washing state port, when the tanker from Washington state is subject to the Jones Act and the tanker from Westridge is not.	<b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b>	<p>The restrictions under the Jones Act lead to different economic consequences and business decisions and have implications for tanker transport demand from the Westridge dock than if the legislation did not exist.</p> <p>Kinder Morgan understands these issues because it recently purchased a number of tankers subject to the Jones Act and has more on order.</p> <p>As an owner of Jones Act tankers Kinder Morgan must ensure that there is a majority of its ownership that rests in US residents hands, thus impacting financial as well as economic List of Issues.</p> <p>These questions deal with List of Issues #2,3,4,5.</p>



IR	Request	Answer	Request for Board Ruling
1.14 (f)	Please comment on whether the Westridge dock as a waterborne access point becomes uneconomic or commercially challenged if the Jones Act is repealed or amended to remove the transport restrictions.	<b>The information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b>	<p>The restrictions under the Jones Act lead to different economic consequences and business decisions and have implications for tanker transport demand from the Westridge dock than if the legislation did not exist.</p> <p>Kinder Morgan understands these issues because it recently purchased a number of tankers subject to the Jones Act and has more on order.</p> <p>As an owner of Jones Act tankers Kinder Morgan must ensure that there is a majority of its ownership that rests in US residents hands, thus impacting financial as well as economic List of Issues.</p> <p>These questions deal with List of Issues #2,3,4,5.</p>

IR	Request	Answer	Request for Board Ruling
1.15 (a)	<p><b>Economic Benefits Materials</b></p> <p>Please confirm that the brochure made available to attendees at the presentations outlined in reference (i) is reference (ii). If not confirmed please provide a copy of the brochure that was handed out and relied on at the presentations. If reference (ii) was provided as a handout, please table it as evidence.</p>	<p><b>Confirmed. Trans Mountain declines to submit the brochure as evidence to this proceeding. Trans Mountain relies on the evidence in the IHS report in Volume 2 Appendix A which reaches a similar \$50 million conclusion. IHS states on page 7, footnote 3: “IHS estimates that Western Canadian producers would have received between \$15-19 billion in incremental revenue in 2012, had they been able to bring their crude oil to other markets”. This range equals \$41 billion to \$52 billion annually.</b></p>	<p><i>Note the last sentence in the answer: “This range equals \$41 billion to \$52 billion annually.” Makes no sense and it is likely Trans Mountain meant to say \$41 million - \$52 million a day.</i></p> <p>Trans Mountain has conducted 16 community presentations and relied on the \$50 million a day Chamber of Commerce, September 17, 2013 brochure which Kinder Morgan partially funded. Representations to the public is in support of their application, has been referenced in the evidence and included in slides submitted in the evidence. Yet Trans Mountain refuses to table the document.</p> <p>Footnote 3 on page 7 says: “IHS estimates that Western Canadian producers would have received between \$15-19 billion in incremental revenue in 2012, had they been able to bring their crude oil to other markets” The evidence filed “Consultation Update No. 1 &amp; Errata, Volume 2, Appendix C taken from the requested brochure, says: Lack of Market Access has Cost Canada As Much as \$50 million a day”. These are two very different claims.</p> <p>The Board please order Trans Mountain to file as evidence:</p> <ul style="list-style-type: none"> <li>i) \$50 million a day brochure provided to the public during its consultations;</li> <li>ii) The IHS report that purports to estimate \$15-\$19 billion would have been realized by producers in 2012; and</li> <li>iii) The IHS report that claims the figure is \$11 billion, not \$15-\$19 <a href="http://www.ontarioenergyboard.ca/html/oebenergyeast/documents/IHS-CERA_Oil_Sands_Economic_Benefits_Jan2014.pdf">http://www.ontarioenergyboard.ca/html/oebenergyeast/documents/IHS-CERA_Oil_Sands_Economic_Benefits_Jan2014.pdf</a> Footnote 10</li> </ul>

IR	Request	Answer	Request for Board Ruling
1.15 (f)	When Trans Mountain elected to rely on reference (ii) were there any discussions held with the author(s) of the report to determine the accuracy or reliability of the \$50 million a day figure. If so, what was the substance of those conversations and what material or information did Trans Mountain provide to support the figure?	<b>Trans Mountain is not relying on reference (ii) as evidence in this proceeding. Trans Mountain relies on the IHS report addressing supply and markets and The Conference Board of Canada report for economic benefits. Trans Mountain has made reference to the Canadian Chamber of Commerce report to and other related info graphic material to assist with communication efforts.</b>	Trans Mountain has relied on the brochure as evidence to this hearing in its “Consultation Update No. 1 & Errata, Volume 2, Appendix C” and as such should be required to file the brochure to allow for due diligence on it. Trans Mountain has claimed that its project will assist in generating \$50 million a day to Canada and should be compelled to answer questions regarding this claim.  This request speaks to List of Issues #2 - #4.
1.15 (o)	Please confirm that Mr. Anderson’s reference to a \$25 per barrel increase in the price of crude oil in reference (iv) translates to roughly 15 cents a litre at the pumps if the crude oil price increase is passed on by the refinery to the end user. If not confirmed, please provide a clear and fulsome discussion of the impact at the pumps if the price of crude oil for Western Canadian production increased by an average of \$25 per barrel, on all barrels, because of increased pipeline throughput capacity.	<b>Not confirmed. Mr. Anderson was referring to a \$25 per barrel increase in Canadian crude prices and not the world price of crude as may be being suggested in the question. The 15 cent reference was not made by Mr. Anderson. The information request is not relevant to one or more of the issues identified in the National Energy Board’s List of Issues for the Trans Mountain Expansion Project.</b>	Trans Mountain maintains that an increase in the price of feedstock at the refinery gate in Canada of \$25 per barrel (which translates into roughly 15 cents a litre) is not relevant to the List of Issues or the scope of the Board’s public interest review  Please address these issues fully as this Intervenor thought that the negative economic consequences of higher priced oil arising as a result of the project would be part of the scope of the Panel’s considerations.  This request speaks to List of Issues #2 - #4.

IR	Request	Answer	Request for Board Ruling
1.15 (r)	Reference (i) page 2-12 includes a screen shot of the Economic Benefits for Trans Mountain Expansion Project. There is no transcript of the video available. Please provide a transcript of the video narrative.	<p><b>r) The following is the transcript of the Economic Benefits video for Trans Mountain Expansion Project as referenced above. The video is available on the project website.</b></p> <p><b>The Trans Mountain Pipeline has a long and successful history in Canada, from the first discovery of oil in Leduc, Alberta, to the remarkable engineering feat of building the pipeline across the Rockies from Northern Alberta to Burnaby, BC in 1953.</b></p> <p><b>60 years later, the Trans Mountain Pipeline is planning to expand to keep up with growing demand.</b></p> <p><b>Right now, Canada is losing out on more than \$50 million dollars a day in oil revenues. That means a lot of jobs and tax revenues – more than \$15 million for federal and provincial government services every day....</b></p>	<p>Trans Mountain relies on the claim that \$50 million a day is lost in Canada right now (not 2012) in its website promotional video for the economic benefits from Trans Mountain's expansion project.</p> <p>There is a direct link implied that these claims are being reviewed and assessed by the review process. Thus the Panel should compel Trans Mountain to table as evidence the Chamber of Commerce brochure.</p> <p>This request speaks to List of Issues #2 - #4.</p>

IR	Request	Answer	Request for Board Ruling
1.19 a - u	<p><b>Scope of Environmental Assessment</b></p> <p><b>This entire section of Information Requests relates to the scope of environmental review and consists of 21 questions all of which Trans Mountain should revisit based on the Board's ruling except for the acceptable answers to a, f, n, q, s, u).</b></p> <p><b>Trans Mountain has relied on reference to 1.01 (a) for 5 of them and thus Robyn Allan will rely on the Boards ruling of that to determine whether to order Trans Mountain to adjust answers to (g, h, i, j, k).</b></p> <p><b>Trans Mountain refused to answer on the basis of relevancy for 6 of them (l, m,o, p, r and t).</b></p> <p><b>Unsatisfactory answers are (b,c,d, and e)</b></p>	<p><b>This entire section of Information Requests relates to the scope of environmental review and consists of 21 questions all of which Trans Mountain should revisit based on the Board's ruling except for the acceptable answers to a, f, n, q, s, u).</b></p> <p><b>Trans Mountain has relied on reference to 1.01 (a) for 5 of them and thus Robyn Allan will rely on the Boards ruling of that to determine whether to order Trans Mountain to adjust answers to (g, h, i, j, k).</b></p> <p><b>Trans Mountain refused to answer on the basis of relevancy for 6 of them (l, m,o, p, r and t).</b></p> <p><b>Unsatisfactory answers are (b,c,d, and e)</b></p>	<p>The decisions arrived at by the Board in the decision requested will determine how Trans Mountain is required to address all the questions except for the ones that have been adequately answered as identified as: 1.19 a, f, n, q, s and u.</p>
1.21 (c)	<p>If yes, please explain how the GENIVAR and Tanker Safety Expert Panel Report informed Trans Mountain's Application.</p>	<p><b>Did Trans Mountain review and consider in depth the GENIVAR report referenced in reference (ii)?</b></p>	<p>Trans Mountain answered the question 1.21 (c) with the Intervenor's previous question posed (1.21 (b)). Assuming this is an error and Trans Mountain intended to answer the question, the Board please provide Trans Mountain with the opportunity to do so.</p>

IR	Request	Answer	Request for Board Ruling
1.23	<p><b>Market Demand</b></p> <p>Does Trans Mountain believe that the cost of gasoline at the pumps, and the cost of other petroleum product prices facing end users may be a public interest issue? If not, please explain.</p>	<p>Trans Mountain acknowledges that the price of gasoline and other petroleum prices facing end users is of interest to the public. Trans Mountain notes that crude stock prices for the refiners is only one of many factors (including but not limited to World oil prices, refinery margins, and competition from other transported sources of refined products) that may effect prices to the public; however, <b>the information request is not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project.</b></p>	<p>The evidence filed by the Proponent in Volume 2, Appendix A predicts an increase in heavy crude oil prices of roughly \$5 - \$6 per barrel (US 2012) more each year for 20 years than if the Trans Mountain expansion does not proceed. The Proponent relies on these netback improvements to predict project economic benefits. This translates to 3 - 4 cents a litre at the pumps in current dollars.</p> <p>KMC President Ian Anderson told US analysts in January 2014 that he believes the project will increase the price of oil an average of \$25 per barrel. These price increases, when passed on, amount to roughly 15 cents a litre at the pumps in current dollars. <a href="http://www.vancouverobserver.com/environment/trans-mountain-will-raise-pump-prices-15-cents-litre-according-kinder-morgan-president">http://www.vancouverobserver.com/environment/trans-mountain-will-raise-pump-prices-15-cents-litre-according-kinder-morgan-president</a></p> <p>The Board is respectfully asked to rule as to whether or not the increase in the price of crude oil predicted by Trans Mountain and its consultant and the impact of this increase on the Canadian economy and Canadians is relevant to the List of Issues. In particular, whether the impact of Trans Mountain's project on:</p> <ul style="list-style-type: none"> <li>i) Western Canadian refineries that rely on western Canadian oil supply;</li> <li>ii) Canadian end users of the oil transported by the pipeline; and</li> <li>iii) Canadian end users of oil produced in Canada</li> </ul> <p>is within the relevancy of the List of Issues, or outside the relevancy of the List of Issues as claimed by Trans Mountain. This request speaks to List of Issues #2, #3 and #4.</p>

IR	Request	Answer	Request for Board Ruling
1.25 (a)	<p><b>Oil Spills a Kinder Morgan Business Opportunity</b></p> <p>Please confirm that Trans Mountain regards oil pipeline and marine spills as potentially positive since “spill response and clean-up creates business and employment opportunities for affected communities, regions, and clean-up service providers.”</p>	<p><b>Regrettably, recent media coverage has caused the reference in the preamble to be taken out of context and some have interpreted it in a way that is not consistent with its original intent. The following clarification is provided in response to this request and to other similar Information Requests. First and foremost, no spill is acceptable to Trans Mountain, nor is it part of the economic justification for our project. Please see the response to Allan R IR No. 1.01cc for an explanation of the assessments of potential spill effects included in the Application.</b></p>	<p>Regrettably, Trans Mountain has not answered this question in a full and reliable manner that would provide the Board with a clear picture of the profits to be earned by Trans Mountain and Kinder Morgan Canada Inc. from their ownership interests in marine and terrestrial spill response organizations.</p> <p>Neither is Trans Mountain willing to acknowledge or discuss the obvious conflict of interest these ownership, and profit making relationships create in the identification of a full and accurate audit of the spill preparedness and response realities. WCMRC’s first obligation is to its shareholders, not the public. This conflict of interest situation should not be allowed to exist. Questions in Allan R IR 1.25 (a) - (k) speak directly to List of Issues #8.</p> <p>Trans Mountain Pipeline LP holds the assets that give rise to oil spills in a marine environment such as the 2007 spill that impacted Burrard Inlet. The company earns dividends related to responding to those very spills (and other marine spill events). We have a situation where the owner responsible for the spill controls the entity that responds to, and reports on the spill.</p> <p>Trans Mountain Pipeline L.P. is guaranteed a 7.6% return on equity for its 50.9% ownership in the marine spill preparedness and response organization WCMRC, and has generated almost \$500,000 in ROE in the past five years (2009 - 2013) (see Response to R Allan R 1.25 (b) (e) and (g). WCMRC’s other owners—shippers on Trans Mountain—capture similar returns in proportion to their ownership.</p>

IR	Request	Answer	Request for Board Ruling
			<p>There is a significant conflict of interest issue between a pipeline company, oil shippers, and the spill preparedness and response organizations they hold ownership interests in that Trans Mountain has not acknowledged or disclosed to the Board. See response to NEB IR No. 1.64.</p> <p>More importantly, Trans Mountain has not disclosed to Robyn Allan in response to a direct question regarding “oil pipeline spills” and “clean-up service providers” that Kinder Morgan Canada holds an ownership interest in the terrestrial spill response “clean-up service provider” WCSS.</p> <p>Robyn Allan is aware of that relationship because of a brief reference in the Application in Volume 7. “The second major, established response organization is Western Canada Spill Services (WCSS), of which KMC is a shareholder and sits on the Board of Directors.”</p> <p>The response to 1.25 (a) is a non-answer designed for public relations purposes that ignores the business opportunities that Trans Mountain is fully aware of, and benefits from, in at least two ownership relationships with service providers. Neither of these business relationships are referenced in the answer for the benefit of R Allan or other intervenors with similar concerns raised in their IRs and redirected, according to Trans Mountain, to this non-answer. 1.25 (a) misleads the Intervenor, other Intervenor and the Board.</p>
			<p>The Board is respectfully requested to compel Trans Mountain to fully re-address this question in light of the benefits it receives from ownership in “clean up service providers”.</p>



### **Decision or Order Requested**

- a) The Board rule whether Trans Mountain has correctly represented the Board's determinations regarding the scope of the public interest review and environmental assessment including Trans Mountain's claims that the scope of the hearing to determine whether the Application is in the public interest is limited to the definition of the "Project" in Volume 1 as the incremental facilities and incremental capacity rather than environmental and socio-economic impact of the entire Trans Mountain system which consists of the existing or legacy pipeline system **plus** proposed expanded facilities;
- b) Should the Board rule that Trans Mountain's limited definition of the public interest and scope of the public interest review and environmental assessment is inconsistent with the Board's view, the Board clearly define its intended scope of the public interest test and require Trans Mountain to amend its evidence to reflect this scope, file appropriate reports and other documentation to correct its evidence to incorporate such scope, and answer the Information Request submitted by Intervenor Robyn Allan in a full and adequate manner that reflects the Board's ruling on the scope of the public interest review and environmental assessment;
- c) If the Board rules that Trans Mountain's representation of the public interest and environmental assessment in a) above is correct such that only the incremental impact of the project is within the scope of the public interest review, that the Board require Trans Mountain remove any and all references in its submissions to this hearing that refer to the long-term shipper commitments of 707,500 barrels per day, and revenue generation related to those commitments, including but not limited to where those commitments support List of Issue #2—Financial Feasibility of the Proposed Project—since approximately 275,000 barrels a day of Trans Mountain's long-term business obligations are dependent upon the throughput capacity of the existing system. Without the capacity of the existing system the project, according to Trans Mountain, is not financially feasible. If the legacy pipeline system is outside the scope of the List of Issues as Trans Mountain asserts, and if the Board agrees, then Trans Mountain should not be permitted to rely on the revenues generated from the existing system in support of its Application;
- d) If the Board agrees that Trans Mountain's interpretations of the Board's scope of review as expressed in a) above is correct, the Board require that Trans Mountain remove from the Hearing record sections of Volume 1 that rely on Volume 2 and Volume 2 in its entirety because in order to arrive at its conclusions regarding the need for the project, production, supply, demand, financial and commercial viability, financing capacity, and impact, Volume 2 relies on the operation of the **entire** system (legacy and proposed expansion), not just the operation of the expanded system. Thus Trans Mountain violates its limited definition of the scope of review and interpretation of the List of Issues. Any evidence that relies on this definition correspondingly needs to be removed from the Hearing record;

e) The Board rule on whether Trans Mountain has correctly assessed the relevance of questions posed by the Intervenor Robyn Allan when it references the Board's List of Issues and refuses to address the information requests as detailed in Table 1. This ruling to explicitly address, but not be limited to Trans Mountain's assertion that the following areas of review are "**not relevant to one or more of the issues identified in the National Energy Board's List of Issues for the Trans Mountain Expansion Project**":

i) **Corporate Structure, Corporate Governance, Accounting Practices, and Financial Capacity of Kinder Morgan—Trans Mountain's US based owners**

The corporate structure, corporate governance, financial relationships, financial capacity, and accounting practices of and between the complete family of Kinder Morgan corporate entities related to the Trans Mountain assets is relevant to List of Issues:

- #2. The economic feasibility of the proposed project;
- #3. The potential commercial impacts of the proposed project; and
- #4. The potential environmental and socio-economic effects of the proposed project, including any cumulative environmental effects that are likely to result from the project, including those required to be considered by the NEB's Filing Manual.

Trans Mountain claims they are not.

ii) **Tax Obligations of Kinder Morgan's Canadian Based Entities Related to Trans Mountain's Regulated Assets**

The purpose of information requests is to seek answers that assist in testing the accuracy and reliability of the evidence for the benefit of the Board's consideration. Trans Mountain has claimed that its expansion project will contribute significantly to fiscal revenue at the federal and provincial level and asserts that Trans Mountain's profits are assessed at an effective tax rate of 25%. A reliable and accurate method to test this claim is to examine the historical tax treatment of Trans Mountain. Trans Mountain refuses to answer questions related to Trans Mountain and its related Canadian entities tax treatment, effective rate of taxation, structure, accounting or other issues that would assist in understanding the actual tax remitted in Canada. Once actual tax treatment and corresponding tax burdens are determined, it would be possible to reliably predict the likely tax treatment and remittance in Canada of the expanded operations. These estimates could be compared against the estimates provided in the Application, Volume 2, Appendix B. This line of inquiry is relevant to the List of Issues:

- #2. The economic feasibility of the proposed project;
- #3. The potential commercial impacts of the proposed project; and
- #4. The potential environmental and socio-economic effects of the proposed project, including any cumulative environmental effects that are likely to result from the project, including those required to be considered by the NEB's Filing Manual.
- #8. The terms and conditions to be included in any approval the Board may issue.

Trans Mountain maintains they are not.

### **iii) Distributable Cash Flow**

Trans Mountain distributes cash flow on a regular basis to its US parent through a number of corporate entities. Trans Mountain asserts that a fulsome explanation and reconciliation of its Distributable Cash Flow (DCF) is not relevant to the List of Issues when these distributions represent a significant outflow of funds on a regular and obligated basis. Such distributions are related to Kinder Morgan Canadian entity agreements with their US parent(s). The distribution of Trans Mountain system cash flow of more than \$150 million per year on a revenue base of roughly \$300 million a year appears to be siphoned away from the Canadian economy under the current operation and obligations of the Trans Mountain system (according to publicly available information). This outflow of funds from the Canadian economy is likely to be proportionally as great or greater under the proposed expanded operations. A full, accurate and reliable accounting of DCF speaks directly to whether the project is in the Canadian public interest and the List of Issues:

- #2. The economic feasibility of the proposed project;
- #3. The potential commercial impacts of the proposed project; and
- #4. The potential environmental and socio-economic effects of the proposed project, including any cumulative environmental effects that are likely to result from the project, including those required to be considered by the NEB's Filing Manual.
- #8. The terms and conditions to be included in any approval the Board may issue.

Trans Mountain maintains they are not.

### **iv) Petroleum Product Price Increases**

Trans Mountain was asked whether the impact of higher prices for heavy crude oil assumed to result from its proposed project, and their impact at the pump and on other end user petroleum product prices facing Canadian consumers and businesses was a public interest issue. "Does Trans Mountain believe that the cost of gasoline at the pumps, and the cost of other petroleum product prices facing end users may be a public interest issue? If not, please explain." IR Robyn Allan, 1.23 (I).

Trans Mountain has responded that “the information request is not relevant to one or more of the issues identified in the National Energy Board’s List of Issues for the Trans Mountain Expansion Project.”

The evidence filed by the Proponent in Volume 2, Appendix A predicts an increase in heavy crude oil prices of roughly \$5 - \$6 per barrel (US 2012) more each year for 20 years than if the Trans Mountain expansion does not proceed. The Proponent relies on these netback improvements to predict project economic benefits. This translates to 3 - 4 cents a litre at the pumps in current dollars.

KMC President Ian Anderson has told US analysts in January 2014 that he believes the project will increase the price of oil an average of \$25 per barrel. These price increases, when passed on, amount to roughly 15 cents a litre at the pumps in current dollars.

The Board is respectfully asked to rule as to whether or not the increase in the price of crude oil predicted by Trans Mountain, and the impact of this price increase on the Canadian economy and Canadians, is relevant to the List of Issues. In particular, whether the impact of higher crude oil prices because of Trans Mountain’s expansion project on:

- i) Western Canadian refineries that rely on western Canadian oil supply;
- ii) Canadian end users of the oil transported by the pipeline; and
- iii) Canadian end users of oil produced in Canada

is within the relevancy of the List of Issues. Trans Mountain claims they are not.

- f) If the Board determines that Trans Mountain’s interpretations of the Board’s scope of List of Issues as expressed in e) i-iv above are incorrect, the Board require that Trans Mountain provide full and adequate responses to Robyn Allan’s Information Request No. 1 as outlined in Table 1 below, accordingly, by a fixed date;
- g) If the Board determines that Trans Mountain’s interpretations of the Board’s scope of List of Issues as expressed in e) i-iv above are correct, the Board require that Trans Mountain remove from the Hearing record sections of Volume 1 that rely on Volume 2 and Volume 2 in its entirety because in order to arrive at its conclusions regarding the need for the project, production, supply, demand, financial and commercial viability, financing capacity, and commercial impact, Volume 2 relies on the relevance of the following as being included in Board’s the List of Issues:
  - i) The corporate structure, corporate governance, financial relationships, financial capacity, and accounting practices of and between the complete family of Kinder Morgan corporate entities in Canada and the US (Volume 2, Section 3.2.2, Financial Capacity of the

Applicant and Volume 2 Appendix B Conference Board of Canada and Volume 2, Appendix C, Evidence of John Reed );

- ii) The tax liability Kinder Morgan can reasonably expected to pay when the expanded system is operational which is dependent upon its corporate structure and reliance on Canadian tax law and the Canadian US tax treaty (Volume 2, Section 3.4 Project Benefits, Volume 2, Appendix B, Conference Board of Canada and Volume 2, Appendix C, Evidence of John Reed);
  - iii) Trans Mountain's Distributable Cash Flow under system expansion (Volume 2, 3.2.2 Financial Capacity of the Applicant, Volume 2, Appendix B, Conference Board of Canada and Volume 2, Appendix C, Evidence of John Reed);
  - iv) Higher prices for crude oil received from producers (referred to as netbacks in the Application) and any reliance on them to predict benefits (Volume 2, Appendix A IHS Steven Kelly);
- h) The Board compel Trans Mountain to file as evidence:
- i) Kinder Morgan Analyst Conference, Investor Presentation, Transcripts Relevant to Trans Mountain and/or Kinder Morgan Canada, 2005 - 2014 including all presentations made by Kinder Morgan Canada President, Ian Anderson;
  - ii) Kinder Morgan Analyst Conference, Investor Presentation, Slides Relevant to Trans Mountain and/or Kinder Morgan Canada, 2005 - 2014, including all slides relied on by Kinder Morgan Canada President, Ian Anderson;
  - iii) Trans Mountain Pipeline ULC, Responses to Canadian association of Petroleum Producers, Information Request No.1, RH-001-2012, revised January 10, 2013, Exhibit B16-6;
  - iv) Application, Trans Mountain Pipeline ULC, For Approval of 2014 Final Tolls Pursuant to 2013 - 2015 Incentive Toll Settlement, 2014, Final Toll Calculation Schedules;
  - v) Governance Guidelines for the Board of Directors, Corporate Governance and Board of Directors for KMI, KMR and KMP;
  - vi) Annual Report KMI, KMR, KMP 2013;
  - vii) Western Canada Propane, Heavy Oil an Diluent Supply and Demand, Prepared for Kinder Morgan Cochin ULC, S. Kelly and G. Goobie, IHS, August 2012;

- viii) Analysis of Potential Future Rail Competition to Trans Mountain and Other Pipelines, Appendix A, George R Schink, RH-001-2012;
  - ix) Powerpoint presentation delivered by Trans Mountain's legal firm, Osler, Hoskin, Harcourt LLP on the "Regulatory and Aboriginal Issues Facing the Pipeline Industry" at the Canadian Bar Association, Environmental Law Section, June 5, 2014;
  - x) Report identified by Trans Mountain in the IR where it says in the Application that "IHS estimates that Western Canadian producers would have received between \$15-19 billion in incremental revenue in 2012, had they been able to bring their crude oil to other markets";
  - xi) IHS Report where the figure is \$11 billion, not \$15 - 19 billion for 2012 ([http://www.ontarioenergyboard.ca/html/oebenergyeast/documents/IHS-CERA\\_Oil\\_Sands\\_Economic\\_Benefits\\_Jan2014.pdf](http://www.ontarioenergyboard.ca/html/oebenergyeast/documents/IHS-CERA_Oil_Sands_Economic_Benefits_Jan2014.pdf)); and
  - xii) Canadian Chamber of Commerce, \$50 Million a Day, September 17, 2013, Brochure; and
- i) Any other relief the Board determines necessary under the circumstances.

All respectfully submitted this 30th day of June, 2014.

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