



File OF-Fac-Oil-T260-2013-03 02  
15 January 2015

Ms. Elisabeth Graff  
Authorized Representative for the Province of British Columbia  
British Columbia Ministry of Justice  
3<sup>rd</sup> floor, 1675 Douglas Street  
Victoria, BC V8W 2G5  
Email [elisabeth.graff@gov.bc.ca](mailto:elisabeth.graff@gov.bc.ca)

Dear Ms. Graff:

**Hearing Order OH-001-2014  
Trans Mountain Pipeline ULC (Trans Mountain)  
Application for the Trans Mountain Expansion Project (Project)  
Province of British Columbia (Province) notice of motion dated 5 December 2014  
(Motion)  
Ruling No. 50**

The National Energy Board (Board or NEB) is in receipt of the Province's 5 December 2014 [Motion](#), in which it requests the following relief:

- a) an order that, by a fixed date, Trans Mountain file the information, identified in the Motion, that was redacted from the Emergency Management Program (EMP) documents [filed](#) on 17 October 2014;
- b) an order that Trans Mountain file the Western Canada Marine Response Corporation (WCMRC) Oil Spill Response Plan by a fixed date;
- c) an order that, by a fixed date, Trans Mountain file responses to the outstanding items in the Province's first round of information requests (IRs), as Trans Mountain committed to in its response to the Province's 4 July 2014 notice of motion;
- d) an extension of the deadline for filing the second round of intervenor IRs to Trans Mountain; and
- e) such other relief as the Board may consider appropriate in the circumstances.

On 8 December 2014, the Board issued a [letter](#) to establish a comment process for the Motion. The Board advised that it would accept comments from Trans Mountain and all intervenors on or before 11 December 2014, with reply comments from the Province to be filed on or before 16 December 2014.

### The Motion

In its Motion, the Province outlines the steps it has taken to obtain certain information from Trans Mountain about the company's current and proposed spill response plans and its overall ability to respond to Project-related spills. These steps include a previous motion to compel Trans Mountain to produce its EMP documents, which the Board addressed in [Ruling No. 31](#).

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In its current Motion, the Province takes issue with the extent of the redactions Trans Mountain made to its EMP and other documents filed on 17 October 2014 in response to Ruling No. 31, and the lack of justification provided. The Province asserts that the redacted documents were accompanied by a table that lists the redactions and simply notes whether the redaction was made for “personal,” “commercial,” or “security” reasons, without further information or justification.

The Province attached to the Motion a series of letters between the Province and Trans Mountain following the 17 October 2014 filing. These letters had not been previously filed on the public record for this hearing. In one of these letters, dated 20 November, Trans Mountain provided additional clarification as to why it redacted certain portions of existing EMP documents requested by the Province. Trans Mountain further detailed steps it would take to support consultation and the future development of EMP documents for the Project. In the Province’s view, this letter failed to provide compelling justification for the redactions made.

In its Motion, the Province proceeds to outline its view on the relevance of specific EMP documents to the Project hearing, and why the redactions Trans Mountain made were improper, excessive, and inadequately justified.

The Province also takes issue with the fact that Trans Mountain failed to file its entire Pipeline Control Points Manual and Field Guide and Fire Safety Plan, as well as the WCMRC Oil Spill Response Plan and other third party documents referenced in the Province’s IR Nos. 1.10, 1.76, and 1.77. As a result of the delays in providing this information, the Province requests an extension to the second round of intervenor IRs to Trans Mountain.

### **Trans Mountain’s submissions**

The Board received comments from [Trans Mountain](#) on 11 December 2014. In its submissions, Trans Mountain also describes the steps taken by the Province to have Trans Mountain file the existing EMP documents on the Project record. Trans Mountain notes that, when it filed its redacted EMP documents in October 2014 it, “recognized the importance of providing information that will assist the public in understanding the EMP documents, while wanting to ensure that security and confidentiality obligations related to the disclosure of EMP documents are respected.”

Trans Mountain confirms its view that the EMP documents for the existing Trans Mountain pipeline system are not relevant to the Board’s consideration of the Project. However, Trans Mountain discusses its plans to consult with affected parties as part of the process for developing the new EMP for the Project. Trans Mountain further notes that it has offered to discuss the issue of consultation with the Province. It has already engaged some communities in discussions regarding the extent to which EMP documents should be made public to “comply with the NEB’s regulatory requirements,” the public’s interest in the plans, and the protection of people, facilities, and the environment.

Finally, Trans Mountain reiterates its broad categories of justification for the redactions it made to the EMP documents which, in Trans Mountain’s opinion, followed a principled approach. In terms of information that the Province has requested from third parties, including WCMRC, Trans Mountain states that it can only make the requests; it cannot file information that it does not have and which is not in its possession or control.

### **Intervenors’ submissions**

The Board received a number of letters from intervenors in support of the Province’s Motion on or before the 11 December 2014 deadline.

[North Shore No Pipeline Expansion](#) (NS NOPE) supports and adopts the submissions made by the Province in its Motion. NS NOPE is of the view that the Province plays a unique role in that it has institutional expertise on these issues, and has a broader mandate to ensure that the public interest of all British Columbians is protected. NS NOPE further requests additional relief; namely that Trans Mountain be compelled to fulfill commitments it made in response to NS NOPE IR No. 1.22 related to information generated through the TERMPOL process.

In its letter, the [City of Vancouver](#) (Vancouver) supports the relief sought by the Province in paragraphs (a), (b), and (d) of its Motion, further advising that Trans Mountain has also failed to provide sufficient responses to some of Vancouver's IRs. Vancouver requests an order that Trans Mountain file redacted information from the EMP documents and the WCMRC Oil Spill Response Plan (and related information) on or before 12 January 2015. It also requests that the Board grant a three-week extension for filing the second round of intervenor IRs to Trans Mountain.

The [City of Abbotsford, Township of Langley, Fraser Valley Regional District, Fraser Fort George Regional District, and Village of Valemount](#) wrote in support of the relief sought by the Province in paragraphs (a), (c), and (d) of its Motion, advising that they, too, have relevant experience and would be directly impacted by any land-based spills resulting from the proposed Project. These intervenors further request that the Board compel Trans Mountain to file additional, previously redacted information, beyond that which the Province identified in its Motion.

In their letter, [Living Oceans Society and Raincoast Conservation Foundation](#) (Living Oceans/Raincoast) support the Motion. Living Oceans/Raincoast cite examples of how Trans Mountain has failed to provide information in a timely manner throughout the hearing process. Toward that end, these intervenors request additional relief, including that Trans Mountain be required to provide a list of its commitments, and indicate those that have been fulfilled. They also request that Trans Mountain be required to clearly identify the specific commitment it is fulfilling when filing information in future.

The [City of Burnaby](#) also wrote in support of the Province's Motion. It sought additional relief including: (i) an order that Trans Mountain file a chart of all outstanding information committed to in responses to IRs, with a date for filing; (ii) an extension to the deadline for filing the second round of intervenor IRs to Trans Mountain until Trans Mountain has filed all outstanding evidence; and (iii) that the time for Trans Mountain to file any outstanding information be excluded from the hearing timeline, pursuant to subsection 52(5) of the *National Energy Board Act* (NEB Act).

In her letter filed on 11 December 2014, [Ms. Robyn Allan](#) provides her support for the Motion. Ms. Allan further asks that the Board place the Motion in the larger context of two of her prior motions (Ms. Allan motion Nos. 6 and 7), in which she asserts that Trans Mountain and its corporate affiliates are not in compliance with the NEB Act. Ms. Allan further requests, among other things: (i) a stay of Trans Mountain's application; (ii) that subsection 52(5) of the NEB Act be applied to exclude time taken by the Board to consider all applications for leave and approval; (iii) that Trans Mountain be required to file a list of its commitments; and (iv) that Trans Mountain be required to update and re-submit its list of commitments on a monthly basis.

The Board also received letters of support for the Motion, or parts thereof, from [Tsawout First Nation and Upper Nicola Band](#), the [District of North Vancouver](#), the [District of West Vancouver](#), [Adams Lake Indian Band](#), [Pacheedaht First Nation](#), and [Tsawwassen First Nation](#).

The [City of Surrey](#), [Cowichan Tribes](#), [BC Nature and BC Nature Canada](#), and [Squamish Nation](#) wrote in support of the Motion and, in addition, adopted the submissions of various other intervenors, as set out in their respective letters.

### **Late submissions**

The Board also received letters of support for the Motion after the 11 December 2014 deadline from the City of New Westminster, Mr. Andrew Weaver, MLA, the Board of Friends of Ecological Reserves, and the City of Port Moody. No justification was provided in any of these letters as to why the submissions were late, or why they should be accepted late.

The Board received a further response from Ms. Allan after the deadline, in which she seeks to provide a follow-up response to address “factual errors in Trans Mountain’s response letter.” Under the *National Energy Board Rules of Practice and Procedure, 1995*, the only party with the right to file a written reply is the party who brought the motion – in this case, the Province.

The Board establishes timelines in order to be fair and consistent with all participants and to ensure that its decisions can be rendered in a timely and predictable manner. Absent compelling justification, the Board will not accept late submissions or reply comments from parties other than those bringing the motion. In the circumstances, the Board has not considered any of these late submissions in its ruling and will be removing them from the public record.

### **The Province’s reply**

The Province filed its [reply](#) on 16 December 2014. It challenges, among other things, Trans Mountain’s position that the EMP documents are not relevant to the Board’s consideration of the Project. Specifically, the Province points to references throughout the hearing record where Trans Mountain has stated that its existing EMP will be the foundation for its new EMP documents, and where the company has described its contents and has touted its merits. The Province further challenges Trans Mountain’s assertion that it is sufficient for the consultation process on the new EMP documents to occur after a certificate has been issued as this will not allow for their consideration throughout this hearing. In terms of documents in the care and control of third parties, the Province submits that it is incumbent upon Trans Mountain to substantiate claims it has made in support of its Project application, including those about the capacity of third parties to assist in spill prevention and response.

### ***Views of the Board***

In Ruling No. 31, the Board directed Trans Mountain to file certain EMP-related information, if any, by a set date and noted that, if redacted versions were filed, Trans Mountain was to also provide justification for the redactions. As Ruling No. 31 indicated, where redactions are made they must be as narrow as possible and the reasons for redacting should be made clear. In its 17 October 2014 filing, Trans Mountain provided a substantial amount of un-redacted information regarding the EMP for its existing pipeline system. The Board notes, however, that Trans Mountain provided somewhat limited justification for the redactions made. Rather, it largely noted whether each redaction was based on “personal,” “commercial,” or “security” reasons. Some additional justification was provided off the record to the Province in Trans Mountain’s 20 November 2014 letter (included as an attachment to the Motion), but such clarifications were not raised initially, or directly, by the parties through the current motion process.

In this instance, the Board is satisfied that sufficient information has been filed from the existing EMP documents to meet the Board’s requirements at this stage in the process.

As noted previously by the Board in Ruling No. 31, and by other parties in submissions on this Motion, the existing EMP documents would be modified to reflect the proposed new facilities (if approved), which will require consultation with affected and potentially implicated parties. These discussions are part of an ongoing process and require input from all such parties. The Board understands that some of these consultations have already taken place and that relevant parties, including the Province, have been or will be given access to the EMP documents.

As indicated in Ruling No. 31, consultations on the modified EMP documents will also be captured under conditions that would be attached to any certificate that may ultimately be issued. This would likely include conditions such as those [released](#) on 16 April 2014 as Board Draft Condition Nos. 42, 49, and 52 to 54, which would require Trans Mountain to identify their EMP consultations and modifications at various times prior to and during construction.

Based on all of the above, the Board is not persuaded that it requires additional information from the existing EMP documents to meet its requirements at this stage in the process. Therefore, it denies the relief sought by the Province in paragraph (a) of the Motion.

While the Board has denied the relief sought by the Province in paragraph (a), it notes that the justifications for redaction provided by Trans Mountain were not as thoroughly and clearly articulated as the Board would expect. The Board reminds all parties that, when making redactions for reasons of security, personal information, or otherwise, the nature of the information redacted should be generally described, and the reasons for the redactions thoroughly justified, to allow for reasonable scrutiny. In this case, because the information that was filed is sufficient for the Board's purposes at this stage of the process, it is not necessary to rule on the justifications provided for the redactions.

In paragraphs (b) and (c) of the Motion, the Province requests disclosure of a number of documents in the possession of third parties, including WCMRC, the Canadian Energy Pipeline Association, and Port Metro Vancouver.

While Trans Mountain has not filed the specific documents requested, the Board notes that, on 30 October 2014, Trans Mountain did file a substantial amount of [information](#) on behalf of WCMRC in response to various intervenors' IRs. This information describes, among other things, that organization's resources, training, and response capabilities. The Board also notes that Port Metro Vancouver's [Port Information Guide](#) was attached to the TERMPOL Report [filed](#) on 11 December 2014.

On the specific request made, the Board agrees with Trans Mountain that it cannot file information that it does not have and which is not in its possession or control. The relief sought in paragraphs (b) and (c) of the Motion is accordingly denied.

The Board notes, however, that project applicants are required to substantiate any claims made in their applications through facts or other documentary evidence filed. The Board may give less or no weight to claims or assertions made that lack a sufficient evidentiary basis. Through final argument, parties can ask the Board to draw relevant inferences regarding any such unsubstantiated claims made by Trans Mountain or other intervenors.

The Province requests, and a number of intervenors have supported, a general extension for the second round of intervenor IRs to Trans Mountain in order to address issues resulting from the potential filing of additional or amended EMP documents by Trans Mountain.

As the Board has denied the relief sought in paragraphs (a) to (c) of the Motion, and no new information is required to be filed, the Board also denies this request.

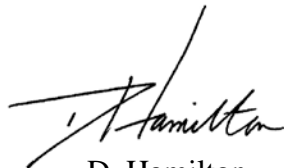
A number of intervenors sought additional relief when providing comments on the Motion. Typically, the Board will only respond to issues raised directly in the motion before it, and will not consider any corollary matters raised by those commenting on a motion. This is done for reasons of fairness, to ensure that parties adverse in interest may be given a reasonable opportunity to respond to any requests for relief made to the Board. However, in this case, the Board is of the view that some of the issues raised by intervenors can be addressed based on information on the record, and it will do so at this time.

The issues raised by the City of Vancouver, City of Abbotsford, Township of Langley, Fraser Valley Regional District, Fraser Fort George Regional District, and Village of Valemount were addressed through this ruling.

In terms of the additional relief sought by NS NOPE, the Board notes that, on 11 December 2014, Transport Canada filed the TERMPOL report with respect to the Project. As set out in [Procedural Direction No. 8 – Revised hearing events and steps table \(12 December 2014\)](#), intervenors have until 18 February 2015 to submit TERMPOL-related IRs to Trans Mountain.

Living Oceans/Raincoast, the City of Burnaby, and Ms. Allan all requested that Trans Mountain be required to file a chart listing the commitments it made throughout the hearing. In an [IR](#) to Trans Mountain dated 17 December 2014, the Board asked Trans Mountain to provide a list of any outstanding documents it committed to file during the hearing process, as well as their respective filing dates. Trans Mountain filed its [response](#) on 2 January 2015. In addition, on 9 January 2015, the Board issued IR No. 3.1 which requires Trans Mountain to file a commitments tracking table containing all commitments it made to the Board and intervenors during the hearing process.

If you have any questions with respect to this ruling, please contact the Board's Process Advisor Team for this Project at 403-292-4800 or 1-800-899-1265 (toll-free), or by emailing [transmountainpipeline.hearing@neb-one.gc.ca](mailto:transmountainpipeline.hearing@neb-one.gc.ca).



D. Hamilton  
Presiding Member



P. Davies  
Member



A. Scott  
Member

c.c. Trans Mountain and all intervenors