

National Energy
Board



Office national
de l'énergie

File OF-Fac-Oil-T260-2013-03 02
8 May 2015

Ms. Annabel Young
Salmon River Enhancement Society
24157 54th Avenue
Langley, BC V2Z 2N4
Email annabelyoung@shaw.ca

Dear Ms. Young:

**Hearing Order OH-001-2014
Trans Mountain Pipeline ULC (Trans Mountain)
Application for the Trans Mountain Expansion Project
Salmon River Enhancement Society (SRES) notice of motion, filed 5 May 2015,
seeking leave to file a late motion to compel full and adequate responses to its
Round 2(c) information requests (IRs)
Ruling No. 68**

The National Energy Board (Board) is in receipt of the above-noted [notice of motion](#) from SRES, seeking leave to file a late motion to compel for its Round 2(c) IRs.

Decision

For the reasons outlined in this ruling, the Board has decided to deny SRES' request.

Background

On 13 March 2015, in [Ruling No. 56](#), the Board decided to allow intervenors to ask Round 2(c) IRs on Trans Mountain's filed evidence of 27 February 2015. That ruling also set out the process for intervenors wanting to submit motions to compel for these IRs.

The process required intervenors to file their motions to compel by 17 April 2015. Trans Mountain's comments on the motions to compel were due by 22 April 2015. Any intervenors' replies to Trans Mountain's comments were due by 24 April 2015.

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SRES' motion

SRES observes that the Board has typically provided more time for motions to compel than it did for those related to Round 2(c) IRs. For motions to compel on Round 2(c) IRs, the Board provided a total of 10 days.

SRES submits that its issues have not been covered by other intervenors' IRs and that it has invested in paying an expert for research specifically in regard to serious harm to fish, fish habitat, and riparian areas in the Langley, Surrey Bend area of British Columbia. Given these two points, SRES is of the view that it would be prejudiced if its motion is denied.

SRES submitted its Round 2(c) IRs to Trans Mountain on 7 April 2015. It asserts that Trans Mountain contacted SRES on 9 April 2015 to set up a meeting with the group (arranged for 16 April 2015) to provide additional answers to SRES' questions.

SRES submits that other intervenors would not be prejudiced by allowing the late motion to compel because the motion is still within the average 30-day period usually provided by the Board for motions to compel.

Views of the Board

The process outlined in [Hearing Order OH-001-2014](#) provided all intervenors an opportunity to ask IRs of Trans Mountain on two occasions, each with a specific opportunity to file motions regarding the adequacy of Trans Mountain's responses. Round 2(c) IRs were added specifically to allow intervenors an opportunity to test Trans Mountain's evidence filed on 27 February 2015.

On 13 March 2015, the Board released Ruling No. 56, clearly setting out the process and timelines to be followed for this IR round.

With approximately 400 intervenors, the Board sets process steps and deadlines to ensure a fair and efficient process for all participants. It is the responsibility of participants to keep abreast of the process steps and deadlines that are established and communicated by the Board. Normally, extensions should be requested prior to the expiry of a deadline.

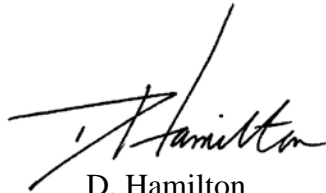
SRES' motion to file a late motion to compel for its Round 2(c) IRs was submitted 18 days after the set deadline to do so. Since SRES and Trans Mountain are said to have organized a meeting about IR matters on 16 April 2015, it is reasonable to expect that SRES would have filed a request for a deadline extension before the 17 April 2015 deadline arrived, or at least as soon as possible thereafter. SRES does not provide justification for waiting until 5 May 2015 to file its motion. Stating that a past deadline has typically allowed greater time is not sufficient justification for missing a deadline.

Regarding prejudice, the Board is not persuaded that there would be no potential prejudice to other participants caused by granting SRES's request to file its late motion to compel. This is because any compelled answers resulting from granting the request would likely not be received before the 27 May 2015 deadline for intervenor written evidence. While the Board would have preferred to be able to consider SRES' request to compel further and better answers, the extension request was filed too late.

For these reasons, the Board denies SRES' request to file a late motion to compel for its Round 2(c) IRs.

In line with what SRES says it has already done, it may continue to meet with Trans Mountain outside of the hearing process to discuss issues and to acquire information valuable to them. The Board encourages productive dialogue between participants whenever possible. SRES also has an opportunity to file its own written evidence, including expert evidence that responds to Trans Mountain's application and IR responses, by the 27 May 2015 deadline.

If you have any questions about the Board's hearing process, please contact the Board's Process Advisor Team for this project by phone at 403-292-4800 or 1-800-899-1265 (toll-free), or by email at transmountainpipeline.hearing@neb-one.gc.ca.



D. Hamilton
Presiding Member



P. Davies
Member



A. Scott
Member

c.c. Trans Mountain and all intervenors