



November 28, 2017

File No. 5330-28-018

National Energy Board
Suite 210, 517 Tenth Avenue SW
Calgary, Alberta, T2R 0A8

Attention: Sheri Young, Secretary of the Board

Dear Ms. Young:

**Re: Trans Mountain Pipeline ULC (Trans Mountain)
Trans Mountain Expansion Project (the Project)
Trans Mountain's 14 November 2017 Notice of Motion Regarding Future Board
Process for Permitting Matters (Motion) – Comment Process
NEB File Number: File OF-Fac-Oil-T260-2013-03 03**

We write in response to Trans Mountain's Notice of Motion dated November 14, 2017 (A87760). The Township of Langley (the Township) opposes Trans Mountain's request to establish a generic process to resolve all disputes in respect to municipal permits.

The Notice of Motion is premature and the proposed process is onerous, rigid, and unnecessary. The detailed route of the Trans Mountain Expansion Project (TMEP) in the Township has not yet been determined. Therefore, the Township and Trans Mountain have not yet finalized the permits, which the Township expects Trans Mountain to apply for in respect to the TMEP.

To date, the Township has not delayed or withheld any municipal permits in respect to the TMEP. It is uncertain what disputes Trans Mountain anticipates the proposed standing Panel to consider, and whether the proposed process will be adequate to address such disputes.

The NEB Act already enables the Board to hear and resolve disputes related to the TMEP. In each instance, the Board can set up an appropriate process. Establishing a pre-emptive one-size-fits-all dispute resolution process creates unnecessary rigidity without material benefit.

The Notice of Motion

Trans Mountain requests the Board to direct that:

- (a) *a standing Panel of the Board be struck to determine Trans Mountain's compliance with, or variance from, Condition 2 of the Certificate as it relates to Trans Mountain's commitment in respect of provincial and municipal permits and authorizations; or, in the alternative, that the existing standing Panel of the Board, struck to determine condition compliance in respect of the Project, also determine Trans Mountain's compliance with, or variance from, Condition 2 of the Certificate as it relates to Trans Mountain's commitment in respect of provincial and municipal permits and authorizations; and,*

(b) time lines for determining compliance with, or variance from, Condition 2 be set as follows:

- a. Trans Mountain or the relevant permitting authority (or authorities, depending on the context) may apply for an order of the Board regarding compliance with, or variance from, Condition 2. Requests would include the specific relief requested from the Board and the relevant background information. The application may seek an order with respect to one or multiple permits;*
- b. the permitting authority or Trans Mountain, as the case may be, may file a response within seven (7) days of the request. For permitting authorities, this response would include the specific information they require to issue the permit or group of permits in question;*
- c. the applicant may file a reply within four (4) days of the other party's response; and*
- d. the Board will use all reasonable efforts to issue an order within seven (7) days of the reply ordering Trans Mountain to proceed, and specifying the conditions, if any, on the work to be undertaken as may be required to comply with Condition 2.*

We understand that the Notice of Motion originated from an earlier notice of motion and constitutional question, which deals specifically with certain permits in the City of Burnaby. In the Notice of Motion, Trans Mountain has led no evidence of delays or concerns with municipal permitting process in the Township.

The Township does not dispute the importance of the TMEP to Canadian economy, or the history of the project, all as set out in the Notice of Motion. However, the Township wishes to emphasize that Trans Mountain has committed to apply for, or seek variance from, provincial and municipal permits and authorizations that apply to the TMEP.¹ This commitment is of paramount importance for the Township, and should be of paramount importance for the Board.

Notice of Motion is Premature

In respect to the Township, the Notice of Motion is premature and unsubstantiated.

Trans Mountain has not been refused any municipal permits in the Township. Neither have any municipal permits been delayed by the Township. The Township has been discussing the municipal permit process with Trans Mountain as part of the Technical Working Group and hopes to continue a collaborative discussion of this topic.

¹ Trans Mountain's Notice of Motion, paragraph 21.

Without being exhaustive, the Township anticipates that Trans Mountain will comply with the following Township bylaws, in the regular course of the Township's operations²:

- Highway and Traffic Bylaw, 2010 No. 4758;
- Noise Control Bylaw, 2015 No. 5172; and
- Soil Deposit and Removal Bylaw, 2013 No. 4975.

Each of these bylaws has its own process and wait-time. For example, the Township's Transportation Engineering issues highway use permits and driveway permits under the Highway and Traffic Bylaw. The current wait-time for highway use permits is 2 – 4 weeks whereas the wait-time for driveway permits is 6 – 8 weeks, all from the Township receiving a complete application. The wait-time may vary depending on the permit type, complexity of the application, prior applications in queue, and staff availability.

Trans Mountain cannot expect preferential treatment, expedited review, or allocation of inordinate number of staff resources to the TMEP. Similar to Trans Mountain, other applicants depend on the timely processing of their applications.

Proposed Process is Rigid

In paragraph 57 of the Notice of Motion, Trans Mountain states that the municipalities will not be prejudiced by a streamlined generic process for resolving compliance disputes related to municipal permits. This conclusion has no basis and is likely incorrect.

The process does not have clear triggers, but has onerous deadlines, making it vulnerable to misuse. For example, Trans Mountain could arbitrarily decide that the Township has delayed a highway use permit. If Trans Mountain initiates the proposed process, the Township would only have seven days (five business days) to respond. This is an extremely short time, considering that the Township will need to allocate staff time and resources to the dispute resolution process.

On the other hand, the process is very rigid. It does not allow for a hearing, examinations, or adequate response time. Without an actual dispute, it is simply impossible to say whether the proposed process works, or whether it will have to be modified in each instance.

Application of Proposed Process is Uncertain

As part of the detailed route review process, the Township has advised Trans Mountain that the Township has not granted its consent to any highway crossing proposed by Trans Mountain. While the Notice of Motion is unclear in this regard, the proposed process should in no way circumvent the protection afforded to the Township by the detailed route opposition process or by section 108 of the NEB Act. Trans Mountain should not be able to rely on the proposed process to trigger disputes that warrant a more thorough investigation under the NEB Act.

² As the detailed route for the TMEP has not yet been finalized, there may be other Township bylaws applicable to the project.

Proposed Process is Unnecessary

The proposed process is unnecessary. Sections 12, 13, and 108 of the NEB Act enable the Board to address disputes dealing with municipal permits and municipal highway crossings. In each instance, the Board can prescribe a process appropriate in the circumstances.

- Section 12 – enables the Board to hear any matter where it appears that any person has failed to do something contrary to a certificate issued under the NEB Act;
- Section 13 – enables the Board to order or require any person to do any act or thing that such person is required to do under an order made under the NEB Act. This section also enables the Board to forbid a person from doing something that is contrary to a certificate issued under the Act; and
- Section 108 – sets out a process, which must be followed before Trans Mountain can construct a pipeline across utilities, including municipal highways.

In light of sections 12, 13, and 108 of the NEB Act, establishing a one-size-fits-all process for all municipal permit disputes is unnecessarily rigid and simplistic. It detracts from the flexibility of the Board without adding any material benefit to Trans Mountain.

Relief Requested

The Township respectfully requests that the Board refuse Trans Mountain's Notice of Motion on the basis that it is premature and unnecessary. The NEB Act provides sufficient process for addressing any issues that Trans Mountain may have with the Township's permitting processes. For each dispute, the Board should set out an adequate process that reflects the particulars of the situation.

If the Board considers setting up the proposed generic process, we respectfully request that the Board:

- Confirm that the municipality responding to the Board may request that the Board amend the process on a case by case basis, as needed;
- Confirm that the proposed process in no event prevents the Township from proceeding with the detailed route opposition, seeking orders under section 108 of the NEB Act, or allows Trans Mountain to circumvent the approval process required under section 108 of the NEB Act; and
- Require Trans Mountain to pay all expenses reasonably incurred by a municipality in the event that Trans Mountain triggers the dispute resolution process.

Yours truly,



Aaron Ruhl
MANAGER, ENGINEERING & CONSTRUCTION SERVICES