



File OF-Fac-Oil-T260-2013-03 59
12 October 2018

To: List of Parties

**Trans Mountain Pipeline ULC (Trans Mountain)
Application for the Trans Mountain Expansion Project (Project)
National Energy Board (Board) reconsideration of aspects of its Recommendation
Report (Report) as directed by Order in Council (OIC) P.C. 2018-1177
MH-052-2018**

Various matters:

- **Decisions following comment processes**
- **Hearing Order MH-052-2018**
- **Explanatory Note to OIC P.C. 2018-1177**
- **Filing requirements for Trans Mountain**
- **Request to Federal Authorities pursuant to paragraph 20(a) of the *Canadian Environmental Assessment Act, 2012* (CEAA 2012)**
- **Offer to consult and cooperate with certain jurisdictions pursuant to section 18 of the CEAA 2012**

A. Background

On 20 September 2018, through [OIC P.C. 2018-1177](#), the Governor in Council (GIC) referred aspects of the Board's [Report](#) for the Project back to the Board for reconsideration (Reconsideration). The GIC's direction followed a 30 August 2018 [decision](#)¹ of the Federal Court of Appeal that quashed the GIC's approval of the Project.

The GIC has imposed a time limit of 155 calendar days for the Reconsideration. Therefore, the Board must complete the Reconsideration process and issue its Reconsideration report no later than **22 February 2019**.

The Board is holding a public hearing to carry out the Reconsideration.

On 5 October 2018, the Board released the [List of Parties](#) for the hearing. The "Parties" consist of Trans Mountain and all intervenors (including Federal Departments and Agencies²).

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¹ *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2018 FCA 153.

² "Federal Departments and Agencies" include those federal departments and agencies that have registered as intervenors in this hearing, as well as those from which the Board has requested information under paragraph 20(a) of the CEAA 2012 (see Part F of this letter). Federal Departments and Agencies are denoted on the List of Parties with the prefix "AA".

B. Decisions following comment processes

In its 26 September 2018 [letter](#), the Board sought public comments on:

- 1) whether, “on a principled basis,”³ Project-related marine shipping should be included in the “designated project” to be assessed under the CEAA 2012;
- 2) the draft Amended Factors and Scope of the Factors for the Environmental Assessment pursuant to the CEAA 2012, and the draft List of Issues to be considered in the Reconsideration hearing;
- 3) the design of the hearing process to be used for the Reconsideration; and
- 4) which government departments or bodies the Board should require information from during the hearing.

In its 5 October 2018 [letter](#), the Board sought additional, focused comments from the Parties on the following limited issue:

Assuming Project-related marine shipping is included in the “designated project” to be assessed under the CEAA 2012, should the designated project be defined as including:

- a) Project-related marine shipping between the Westridge Marine Terminal and the territorial sea limit; *or*
- b) Project-related marine shipping between the Westridge Marine Terminal and the outer boundary of Canada’s EEZ?

Comments received are found in the Board’s online [public registry](#).

Board decisions

The Board has decided, on a principled basis, to include Project-related marine shipping between the Westridge Marine Terminal and the 12-nautical-mile territorial sea limit in the “designated project” to be assessed under the CEAA 2012.

The Board has decided to make adjustments to the List of Issues for the Reconsideration hearing. The List of Issues for the Reconsideration hearing is included as Appendix 1 to Hearing Order MH-052-2018.

The Board has decided not to make adjustments to the Amended Factors and Scope of the Factors for the Environmental Assessment pursuant to the CEAA 2012. The Amended Factors and Scope of the Factors for the Environmental Assessment is included as Appendix 2 to Hearing Order MH-052-2018.

The Board has decided on the hearing process set out in the attached Hearing Order MH-052-2018.

The Board has decided to request specialist or expert information or knowledge in the possession of each of Fisheries and Oceans Canada, Environment and Climate Change Canada, Transport Canada, Vancouver Fraser Port Authority, Pacific Pilotage Authority, Health Canada, Parks Canada, and Natural Resources Canada (see Part F below).

The Board’s written reasons for the all of the above decisions will follow.

³ *Tsleil-Waututh Nation v. Canada (Attorney General)*, *supra* note 2 at para. 770.

C. Hearing Order MH-052-2018

The Board is now releasing Hearing Order MH-052-2018, which details the steps and deadlines that will be followed during the public Reconsideration hearing. In addition to Trans Mountain's participation, the Reconsideration hearing will involve:

- the participation of **intervenors**; and
- gathering **letters of comment⁴ from the public**.

The hearing will include written steps and may include oral steps. It also provides information on the Board's procedures, as well as on the roles, responsibilities, and opportunities of those participating in the hearing.

D. Explanatory Note to OIC P.C. 2018-1177

In the interests of transparency, the Board is placing the Explanatory Note to OIC P.C. 2018-1177 (as published in the Canada Gazette, Part 1) onto the record of this Reconsideration hearing. The Board notes that the Explanatory Note is not part of the OIC.

E. Filing Requirements for Trans Mountain

The Board has issued a letter to Trans Mountain describing the additional Filing Requirements for Trans Mountain that the Board requires for the Reconsideration. Trans Mountain must file the required information on or before **3:00 pm Pacific time (4:00 pm Mountain time) on 31 October 2018**.

F. Requests to Federal Authorities pursuant to paragraph 20(a) of the CEEA 2012

The Board has issued a letter, pursuant to paragraph 20(a) of the CEEA 2012, to request specialist or expert information or knowledge in the possession of each of Fisheries and Oceans Canada, Environment and Climate Change Canada, Transport Canada, Vancouver Fraser Port Authority, Pacific Pilotage Authority, Health Canada, Parks Canada, and Natural Resources Canada in relation to the Reconsideration.

These Federal Authorities are required to provide the requested information or knowledge on or before **3:00 pm Pacific time (4:00 pm Mountain time) on 31 October 2018**.

G. Offer to consult and cooperate with certain jurisdictions pursuant to section 18 of the CEEA 2012

Under section 18 of the CEEA 2012, the Board must:

...offer to consult and cooperate with respect to the environmental assessment of the designated project with any jurisdiction referred to in paragraphs (c) to (h) of the definition *jurisdiction* in subsection 2(1) if that jurisdiction has powers, duties or functions in relation to an assessment of the environmental effects of the designated project.

⁴ The Board notes that some applicants and other members of the public have already submitted substantive comments regarding the Board's Reconsideration, which may or may not constitute their letters of comment. These will remain on the hearing record and will be considered by the Board in completing its Reconsideration Report. For persons or groups where this is the case, those letters do not need to be re-filed.

In accordance with section 18, the Board has posted its offer to consult and cooperate on the [Canadian Environmental Assessment Registry Internet Site](#).

H. Where to find additional information or help

As information becomes available or is released regarding the Reconsideration hearing, the Board will update its Project [webpage](#).

All filings received, and Board correspondence related to, this hearing will be found in a dedicated [folder](#) in the Board's online public registry.

For any questions about this hearing process, please contact a Process Advisor by phone at 1-800-899-1265 (toll-free) or by email at TMX.ProcessHelp@neb-one.gc.ca.

I. Direction to Trans Mountain

Trans Mountain is directed to serve this letter and Hearing Order MH-052-2018 (including its appendices) on those listed in the attached distribution list.

Yours truly,

Original signed by

Sheri Young
Secretary of the Board

Attachments

Distribution list

**List of interested persons to be served with Hearing Order MH-052-2018
Liste des parties intéressées à qui l'ordonnance d'audience MH-052-2018
doit être signifiée**

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