



Canada Energy  
Regulator

Régie de l'énergie  
du Canada

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

517, Dixième Avenue S.-O.  
bureau 210  
Calgary (Alberta)  
T2R 0A8

File OF-Fac-Oil-T260-2013-03 61  
22 July 2021

Mr. Scott Stoness  
Trans Mountain Canada Inc.  
Suite 2700, 300 – 5<sup>th</sup> Avenue SW  
Calgary, AB T2P 5J2  
Email [regulatory@transmountain.com](mailto:regulatory@transmountain.com)

Mr. Shawn H.T. Denstedt, Q.C.  
Osler, Hoskin & Harcourt LLP  
Suite 2500, 450 – 1<sup>st</sup> Street SW  
Calgary, AB T2P 5H1  
Email [sdenstedt@osler.com](mailto:sdenstedt@osler.com)

Dear Mr. Stoness and Mr. Denstedt:

**Trans Mountain Pipeline ULC (Trans Mountain)  
Trans Mountain Expansion Project (TMEP)  
Certificate of Public Convenience and Necessity (Certificate) OC-065  
Application pursuant to section 211 and paragraph 214(1)(b) of the *Canadian Energy Regulator Act (CER Act)* – Segment 5.3  
Order AO-002-OPL-004-2019**

**A. Background**

On 18 June 2019, the Governor in Council approved the TMEP, subject to 156 conditions. Subsequently, on 21 June 2019, the National Energy Board<sup>1</sup> (**NEB**) issued Certificate OC-065 ([C00061](#)).

On 19 July 2019, the NEB directed Trans Mountain to file its Plan, Profile and Book of Reference (**PPBoR**) for the entire TMEP route ([C00593](#)). Trans Mountain filed its PPBoR for Segment 5 on 31 July 2019 ([C00798](#)), including PPBoR Sheets M002-PM03011-010 and 011 in Segment 5.3.

Via Order OPL-004-2019 dated 21 November 2019 ([C03176](#)), the Commission of the Canada Energy Regulator (**Commission**) approved various PPBoR sheets in Segment 5, including PPBoR Sheets M002-PM03011-010 and 011. No conditions were attached to that approval.

**B. Application**

**Overview**

On 25 June 2021, Trans Mountain filed an application ([C13764](#)), pursuant to section 211 of the CER Act, for approval of a post-construction route deviation on the following tracts:

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<sup>1</sup> On 28 August 2019, pursuant to the *Canadian Energy Regulator Act*, the National Energy Board was replaced with the Canada Energy Regulator. The National Energy Board's adjudicative work has been transferred to the Commission of the Canada Energy Regulator.

Tract	Landowner	PPBoR Sheet
PC 7134	Kamloops Airport Authority Society <b>(Kamloops Airport)</b>	M002-PM03011-010
PC 7135		
1596		
PC 7134.01	City of Kamloops <b>(City)</b>	
1597	Her Majesty the Queen in Right of the Province of British Columbia c/o BC Oil and Gas Commission <b>(BCOGC)</b>	M002-PM03011-011
1599		
1600		
1598		n/a

Trans Mountain included revised versions of PPBoR Sheets M002-PM03011-010 and 011 in its application, and confirmed that the deviation is entirely within the approved pipeline corridor.

Trans Mountain also seeks relief, pursuant to paragraph 214(1)(b) of the CER Act, from the requirements of paragraphs 198(c) and (d) to obtain the Commission's approval of the PPBoR, and to deposit that PPBoR in the land registry office or other office, prior to construction.

Trans Mountain states that the rationale for the deviation is to reflect routing revisions that arose when a horizontal directional drill (**HDD**) crossing failed at the North Thompson River along the approved route in October/November 2020. Due to the failed crossing, Trans Mountain had to undertake a redesign of the crossing and its construction footprint, resulting in an expansion of the right-of-way by 1.62 hectares.

On 5 November 2020, pursuant to Certificate Condition 60, Trans Mountain sought additional temporary workspace (**TWS**) outside the approved corridor on lands owned by the Kamloops Airport and Kamloops Golf and Country Club (**KGCC**) in order to implement the redesigned crossing ([C09404](#)). The Commission approved Trans Mountain's request on 10 November 2020, noting that both the Kamloops Airport and KGCC had reached agreements with Trans Mountain with respect to the additional TWS ([C09508](#)).

Trans Mountain submits that it immediately commenced the redesigned crossing in order to avoid disturbances within the breeding period for amphibians and to minimize disruptions to the Kamloops Airport and a nearby golf course, making construction coincide with a period of decreased traffic as a result of COVID-19 restrictions.

The HDD crossing along the revised route was completed on or around 14 December 2020.

In accordance with the Canada Energy Regulator Filing Manual, Trans Mountain submits that the potential environmental and socio-economic effects associated with the deviation are similar to those addressed in its application for the TMEP and related filings. No new studies are required and no new mitigation measures are recommended beyond those identified during the OH-001-2014 and MH-052-2018 proceedings and subsequent condition compliance filings, which are incorporated within the updated Pipeline Environmental Protection Plan for the TMEP (filed under Certificate Condition 72).

Trans Mountain adds that there are no additional condition and compliance requirements associated with the lands as a result of the deviation.

***Consultation with respect to the revised route***

Trans Mountain confirms that it served a *National Energy Board Act* (NEB Act) subsection 87(1) notice and/or a CER Act subsection 322(1) notice on the impacted landowners. There are no additional landowners impacted by the revised route relative to the approved route.

Between March and June 2021, Trans Mountain engaged with the Kamloops Airport and the City, each of which signed a letter confirming that it had no concerns about the revised route and no objection to the approval of that route. New right-of-way agreements for the revised route were also signed.

On 20 June 2021, Trans Mountain also notified the BCOGC that it would file the deviation application, and noted its understanding that the revised route would not require an amendment of the existing BCOGC permit. The BCOGC has not raised any concerns with respect to the revised route, nor has it indicated that a permit amendment is required.

**C. Commission analysis and findings**

In this instance, Trans Mountain has made the following two requests of the Commission:

- 1) approval of the proposed deviation (which has been constructed), pursuant to section 211 of the CER Act; and
- 2) relief, pursuant to paragraph 214(1)(b) of the CER Act, from the requirements of paragraphs 198(c) and (d) to obtain the Commission's approval of the PPBoR, and to deposit that PPBoR in the land registry office or other office, prior to construction.

The Commission notes that Trans Mountain did not obtain approval of, or deposit, the revised PPBoR prior to construction, as required by paragraphs 198(c) and (d) of the CER Act. Nor did Trans Mountain consult with two (the City and BCOGC) of the three landowners impacted by the deviation prior to construction.<sup>2</sup>

The Commission does not accept Trans Mountain's rationale for failing to comply with the requirements for it to consult and obtain approval of the PPBoR prior to construction. Immediate construction was not required to avoid disturbances during the breeding period for amphibians, which Trans Mountain states in its additional TWS request is from approximately 15 April to 15 June. Immediate construction was also not necessary to reduce disruptions to the KGCC or the Kamloops Airport. Trans Mountain states in its additional TWS request that the KGCC was closed for the winter and the Commission is of the view that COVID-19 restrictions related to travel could be expected to be in place well beyond the time when Trans Mountain began construction of the redesigned crossing.

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<sup>2</sup> Trans Mountain consulted with the Kamloops Airport regarding its request for additional TWS. Therefore, the Commission considers that the Kamloops Airport was likely aware of the deviation.

The Commission takes breaches of its requirements seriously and notes that contravention of paragraph 198(c) of the CER Act (formerly paragraph 31(c) of the *National Energy Board Act*) is a designated violation set out in Schedule 1 of the *Administrative Monetary Penalties Regulations (National Energy Board)*.<sup>3</sup>

Notwithstanding the above, the Commission notes that the Kamloops Airport and the City have since confirmed that they have no concerns with the revised route and have signed new right-of-way agreements, and the BCOGC has not raised any concerns or indicated that an amendment to its permit is required. In future, the Commission expects Trans Mountain to undertake consultations, and to obtain necessary approvals from the Commission, in advance of constructing any deviations.

With respect to **Request 1**, having considered Trans Mountain's submissions, and the need to ensure that the PPBoR reflects the constructed route, the Commission approves the deviation and revised PPBoR Sheets M002-PM03011-010 and 011, pursuant to subsection 211(1) of the CER Act.

With respect to **Request 2**, the Commission grants Trans Mountain's request made under paragraph 214(1)(b) of the CER Act, on a prospective basis. The Commission notes that granting this relief does not rectify Trans Mountain's prior non-compliance.

The Commission attaches Order AO-002-OPL-004-2019 reflecting its approval of the deviation. The Commission will forward to Trans Mountain three certified copies of both Order AO-002-OPL-004-2019 and revised PPBoR Sheets M002-PM03011-010 and 011. Trans Mountain is directed to now deposit these documents in the appropriate land titles or registry office(s).

The Commission also directs Trans Mountain to serve, **on or before 27 July 2021**, a copy of this letter and Order AO-002-OPL-004-2019 on all registered owners of the lands to which the deviation pertains.

Yours sincerely,

*Signed by*

Jean-Denis Charlebois  
Secretary of the Commission

Attachment

c.c. Trans Mountain Canada Inc., General Inbox, [info@transmountain.com](mailto:info@transmountain.com)

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<sup>3</sup> SOR/2013-138. Pursuant to paragraph 44(g) of the *Interpretation Act*, the *Administrative Monetary Penalties Regulations (National Energy Board)* are in force and deemed to have been made under the CER Act, insofar as they are not inconsistent with the CER Act, until they are repealed or replaced.



**ORDER AO-002-OPL-004-2019**

**IN THE MATTER OF** the *Canadian Energy Regulator Act* (**CER Act**) and the regulations made thereunder; and

**IN THE MATTER OF** an application filed by Trans Mountain Pipeline ULC (**Trans Mountain**) under File OF-Fac-Oil-T260-2013-03 61, for approval of a deviation on lands depicted on the Plan, Profile and Book of Reference (**PPBoR**) for Segment 5.3 of the Trans Mountain Expansion Project (**TMEP**), pursuant to section 211 of the CER Act, and for relief from the requirements of paragraphs 198(c) and (d) of the CER Act, pursuant to paragraph 214(1)(b) of the CER Act.

**BEFORE** the Commission of the Canada Energy Regulator (**Commission**) on 20 July 2021.

**WHEREAS** via Order OPL-004-2019 dated 21 November 2019, the Commission approved various PPBoR sheets in TMEP Segment 5, including PPBoR Sheets M002-PM03011-010 and 011 in Segment 5.3;

**AND WHEREAS** via Order AO-001-OPL-004-2019 dated 23 December 2020, the Commission approved a deviation related to lands shown on PPBoR Sheet M002-M03011-002 in Segment 5.3;

**AND WHEREAS** on 25 June 2021, the Commission received an application from Trans Mountain, pursuant to section 211 of the CER Act, including revised PPBoR Sheets M002-PM03011-010 and 011, for approval of a route deviation on the following tracts:

Tract	Landowner	PPBoR Sheet
PC 7134	Kamloops Airport Authority Society	M002-PM03011-010
PC 7135		
1596		
PC 7134.01	City of Kamloops	M002-PM03011-011
1597	Her Majesty the Queen in Right of the Province of British Columbia c/o BC Oil and Gas Commission	
1599		
1600		
1598		n/a

**AND WHEREAS** Trans Mountain submitted that the intent of the deviation is to reflect routing revisions that arose when a horizontal directional drill crossing failed at the North Thompson River along the approved route, but which was subsequently completed along the revised route;

**AND WHEREAS** Trans Mountain submitted that there are no other landowners impacted by the deviation;

**AND WHEREAS** Trans Mountain submitted that it engaged with all impacted landowners regarding the deviation after construction, and they have either confirmed that they have no concerns and have signed new right-of-way agreements, or have not raised any concerns or indicated that an amendment to the existing permit is required;

**AND WHEREAS** Trans Mountain submitted that the potential environmental and socio-economic effects associated with the deviation are similar to those addressed in its application for the TMEP and related filings, and no new studies or mitigation measures are recommended beyond those identified during the OH-001-2014 and MH-052-2018 proceedings and subsequent condition compliance filings, which are incorporated within the updated Pipeline Environmental Protection Plan (filed under Condition 72 of Certificate of Public Convenience and Necessity OC-065);

**AND WHEREAS** Trans Mountain's application also sought relief, pursuant to paragraph 214(1)(b) of the CER Act, from the requirements of paragraphs 198(c) and (d) of the CER Act to obtain the Commission's approval of the PPBoR, and to deposit that PPBoR in the land registry office or other office, prior to construction;

**AND WHEREAS** from the time Trans Mountain began construction of the North Thompson River crossing along the revised route until the date of this Order, Trans Mountain was in non-compliance with the CER Act for undertaking construction without obtaining approval of, or depositing, the revised PPBoR and without obtaining an exemption under paragraph 214(1)(b) of the CER Act;

**IT IS ORDERED THAT** the revised PPBoR designated as the following, in the Province of British Columbia, is hereby approved pursuant to subsection 211(1) of the CER Act:

Sheet No.	Portion	Revision	Date
<b>Segment 5.3</b>			
M002-PM03011-010	Book of Reference	2	17 June 2021
	Plan and Profile	2	17 June 2021
M002-PM03011-011	Book of Reference	2	17 June 2021
	Plan and Profile	2	17 June 2021

**IT IS ALSO ORDERED THAT** Trans Mountain is relieved from the requirements of paragraphs 198(c) and (d) of the CER Act, pursuant to paragraph 214(1)(b) of the CER Act, as of the date of this Order.

THE COMMISSION OF THE CANADA ENERGY REGULATOR

*Signed by*

Jean-Denis Charlebois  
Secretary of the Commission