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## LETTER DECISION

File OF-Fac-Oil-T260-2013-03 63  
6 April 2020

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Dear Mr. Richler, Mr. Stoness, and Mr. Denstedt:

**Trans Mountain Pipeline ULC (Trans Mountain)  
Trans Mountain Expansion Project (TMEP)  
Detailed Route Hearings MH-002-2020 (Sugarloaf Ranches Ltd. [Sugarloaf]) and  
MH-003-2020 (KGHM Ajax Mining Inc. [KGHM])  
Decision of the Commission of the Canada Energy Regulator (Commission)**

### 1 Background

On 16 December 2013, Trans Mountain filed an application with the National Energy Board (NEB) under section 52 of the *National Energy Board Act*<sup>1</sup> (NEB Act) for a certificate of public convenience and necessity (Certificate) authorizing the construction and operation of the TMEP.

The TMEP includes twinning the existing 1,147-kilometre-long Trans Mountain Pipeline (TMPL) system in Alberta (AB) and British Columbia (BC) with approximately 981 kilometres of new buried pipeline; new and modified facilities, such as pump stations and additional tanker loading facilities at the Westridge Marine Terminal in Burnaby; and reactivating 193 kilometres of the existing pipeline between Edmonton and Burnaby. Trans Mountain requested approval of a 150-metre-wide corridor for the TMEP pipeline's general route.

Upon receipt of the application, the NEB commenced a public hearing process (Certificate Hearing). Following the Certificate Hearing, on 19 May 2016, the NEB issued its OH-001-2014 Report ([A77045](#)) recommending that the Governor in Council (GIC) approve the TMEP and its general pipeline corridor.

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<sup>1</sup> R.S.C., 1985, c. N-7 (repealed)

The TMEP was approved by Order in Council (OIC) P.C. 2016-1069 in November 2016. The NEB issued Certificate OC-064 and began work on various regulatory processes, including the 2017/18 detailed route approval process.

On 30 August 2018, the Federal Court of Appeal (FCA) issued its decision *Tsleil-Waututh Nation v. Canada (Attorney General)*<sup>2</sup> [FCA Decision], setting aside OIC P.C. 2016-1069 and remitting the matter back to the GIC for appropriate action. Following the FCA Decision, the NEB reconsidered the matter of TMEP-related marine shipping and the Government of Canada reinitiated consultations with Indigenous peoples.

Following a second public hearing process, the NEB issued its MH-052-2018 Reconsideration Report ([A98021](#)) in February 2019. Canada's Crown Consultation and Accommodation Report ([C00219-5](#)) was issued in June 2019. The GIC approved the TMEP again in June 2019 via OIC P.C. 2019-820 ([C00219](#)) and the NEB subsequently issued Certificate OC-065 ([C00061](#)).

On 19 July 2019, following a public comment process, the NEB set out how it would resume the TMEP detailed route approval process ([C00593](#)). The NEB directed Trans Mountain to file its Plan Profile and Book of Reference (PPBoR) for the entire TMEP route. Pursuant to section 34 of the NEB Act, Trans Mountain served landowners along the length of the TMEP with a notice that the detailed route approval process was underway, and placed notices in local publications. The notices indicated that landowners and Indigenous peoples with a continued or new objection to the proposed detailed route, or to the methods or timing of construction, were required to file a statement of opposition (SOO).

For landowners and Indigenous peoples whose 2017/18 detailed route hearings were put on hold following the FCA Decision, filing a new SOO was the only requirement to continue with their detailed route hearings. If these landowners or Indigenous peoples wanted new process steps added to their resumed detailed route hearings, they had to demonstrate a material change in circumstances since the 2017/18 detailed route approval process was held.

Landowners and Indigenous peoples seeking a new detailed route hearing (i.e., those that did **not** have a 2017/18 detailed route hearing underway at the time of the FCA Decision) were required to file SOOs that demonstrated a material change in circumstances since the 2017/18 detailed route approval process was held.

Only SOOs that were filed on time, made in good faith, not withdrawn, and not frivolous or vexatious were accepted.

On 28 August 2019, the *Canadian Energy Regulator Act*<sup>3</sup> (CER Act) came into force, repealing the NEB Act. As of this date, the Commission considered approval of the PPBoR under the CER Act.

## **2 Detailed Route Hearings MH-002-2020 and MH-003-2020**

In 2017, KGHM and Sugarloaf were each granted a detailed route hearing ([MH-009-2018](#) and [MH-008-2018](#), respectively). Trans Mountain and KGHM/Sugarloaf filed written evidence, Trans Mountain filed reply evidence, KGHM/Sugarloaf filed additional evidence

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<sup>2</sup> 2018 FCA 153

<sup>3</sup> S.C. 2019, c. 28, s. 10

(which the NEB accepted as late evidence), and Trans Mountain filed additional reply evidence. The oral portions of the KGHM/Sugarloaf detailed route hearings, which consisted of cross-examination and final argument, were held together before the NEB decision-makers on 1 May 2018. The written transcript is found in the online public registry ([A91671](#)) and the audio recording is available on the Canada Energy Regulator's [website](#).

In 2019, KGHM/Sugarloaf filed SOOs seeking to resume their detailed route hearings ([C01697](#), [C01696](#)). In their SOOs, KGHM/Sugarloaf did not describe a material change in circumstances since the 2017/18 detailed route approval process was held. However, given that the Panel of NEB Members was replaced by a Panel of Commissioners pursuant to the transitional provisions of the CER Act, the Commission sought and received comments from the parties regarding setting a process in light of the "one who hears must decide" principle.

The Commission decided ([C04124](#)) that it would not permit the filing of additional evidence given that no material change in circumstances was established, but that it would hear oral final argument from the parties in Calgary on 3 February 2020, to allow the parties the opportunity to persuade the current decision-makers.

For administrative and consistency purposes, the Commission assigned new hearing numbers to KGHM ([MH-003-2020](#)) and Sugarloaf ([MH-002-2020](#)). The record of the current proceedings consists of the evidence presented in the MH-009-2018 and MH-008-2018 proceedings (including the written transcript of the oral portion held on 1 May 2018), and the additional oral argument presented to the Commission on 3 February 2020.

The three issues to be decided in these detailed route hearings are:

- 1) Is Trans Mountain's proposed detailed route for the TMEP pipeline the best possible detailed route? (see **Section 4**)
- 2) Are Trans Mountain's proposed methods of constructing the TMEP pipeline the most appropriate? (see **Section 5**)
- 3) Is Trans Mountain's proposed timing of constructing the TMEP pipeline the most appropriate? (see **Section 5**)

Trans Mountain bears the onus to prove its case with respect to these issues on a balance of probabilities.

### **3 Introduction to the proposed TMEP on the Lands**

The scope of the KGHM/Sugarloaf detailed route hearings is limited to the following lands:<sup>4</sup>

- Tracts of land where the proposed detailed route follows the existing TMPL alignment: 1611, 1612, **1613**, **1629**, **1630**, and **1632**; and
- Tracts of land where the proposed detailed route deviates from the existing TMPL alignment to avoid Jacko Lake: **1614**, PC 7119, PC 7120, PC 7121, **PC 7122**, **PC 7123**, PC 7124, PC 7125, PC 7126, PC 7128, PC 7129, and **PC 7130**.

Collectively, these lands are referred to as the "Lands."

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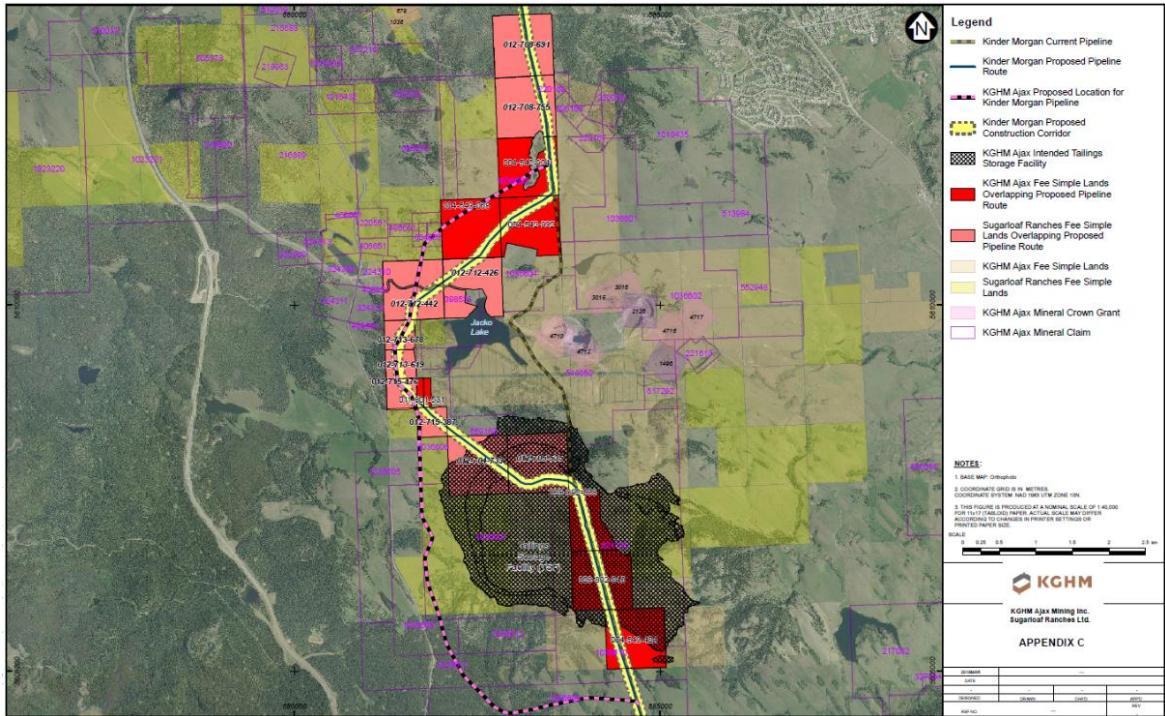
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<sup>4</sup> The tracts of land that are the subject of KGHM's opposition are in **bold**, while the tracts of lands that are the subject of Sugarloaf's opposition are not bolded.

The Lands are depicted on PPBoR Sheets M002-PM03011-013, M002-PM03011-014, M002-PM03011-015, and M002-PM03011-016 ([C00798-5](#)).

Trans Mountain proposes to route approximately 11.7 kilometres of new pipeline across the Lands, as illustrated in Figure 1 below. The figure also illustrates KGHM/Sugarloaf's proposed alternate route. Following are summaries of the parties' general submissions related to the proposed detailed route. Detailed submissions of the parties on key matters in question are summarized and considered in Section 4.1.

**Figure 1 – KGHM and Sugarloaf alternative route map (Filing IDs [A91080-1](#) and [A91081-1](#))**



***Trans Mountain's submissions***

- The TMEP corridor deviates from the TMPL on the Lands to circumvent Jacko Lake.
- The proposed detailed route minimizes the length of the new easement before returning to the TMPL easement.
- The proposed detailed route is the best possible detailed route through the Lands since it minimizes cultural and environmental impacts by providing a buffer area between the TMEP and Jacko Lake.
- The final construction schedule will be determined by, among other things, regulatory approval, seasonal restrictions, and contractor availability.
- Trans Mountain proposes to employ conventional open-cut construction on the Lands and will work with KGHM/Sugarloaf to establish access plans to minimize disruption from construction activities.

### ***KGHM/Sugarloaf's submissions***

- KGHM's proposed Ajax Mine Project includes an open pit copper/gold mine that, if approved, is expected to process 65,000 tonnes of ore per day for export over a mine life of 23 years. The Ajax Mine Project includes a tailings storage facility (TSF) designed to permanently store approximately 440 million tonnes of tailings generated during mine operations. The TSF would be comprised of four earth-rockfill dams or embankments to contain the tailings and water.
- The alternate route is a better route through the Lands than Trans Mountain's proposed detailed route because it avoids the future location of a TSF for the Ajax Mine Project, while also circumventing Jacko Lake.

#### **4 Is Trans Mountain's proposed detailed route for the TMEP pipeline the best possible detailed route?**

##### **4.1 Key matters in question with respect to the Trans Mountain's proposed detailed route**

Following are the Commission's decisions on the fundamental matters of contention raised in the proceeding related to whether Trans Mountain's proposed detailed route is the best possible detailed route. The matters of contention considered below are:

- What is the status of the Ajax Mine Project?
- Did Trans Mountain apply its routing criteria appropriately?
- Should the Commission consider an alternate route outside the approved corridor?
- Is the proposed detailed route superior to the alternate route?

##### **4.1.1 What is the status of the Ajax Mine Project?**

#### ***Trans Mountain's submissions***

- The Ajax Mine Project requires approval from both the Province of BC and the Government of Canada in order to proceed.
- On 13 December 2017, the Province of BC's Minister of Environment and Climate Change Strategy (ECCS) and the Minister of Energy, Mines and Petroleum (EMP) issued their Ministers' Reasons for Decision with respect to the proposed Ajax Mine Project. The Ministers found that the potential adverse effects of the Ajax Mine Project outweigh the potential benefits. As such, the Ministers made the decision not to issue an Environmental Assessment (EA) Certificate for the Ajax Mine Project. This provincial decision is unequivocal.
- On 14 December 2017, the federal Minister of Environment issued its EA Decision Statement and found that the Ajax Mine Project is likely to result in significant adverse environmental effects and significant cumulative adverse environmental effects. The Minister referred the Ajax Mine Project back to Fisheries and Oceans Canada and Natural Resources Canada to determine whether the significant adverse environmental effects could be justified in the circumstances pursuant to section 37 of the *Canadian Environmental Assessment Act, 2012*.<sup>6</sup>

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<sup>6</sup> Repealed, 2019, c. 28, s. 9

- KGHM/Sugarloaf had the opportunity to highlight a material change in circumstances in their 2019 SOOs and they did not do so.
- The Ajax Mine Project is a speculative project. Trans Mountain has been presented with multiple iterations of two proposed mine plans and facility layouts since it began engaging with the Landowner. The proposed detailed route on the Lands has been, and must be, developed on the basis of actual land uses and approved developments.

### ***KGHM/Sugarloaf's submissions***

- The proposed detailed route traverses the contemplated TSF site, which is a necessary part of KGHM's proposed Ajax Mine Project. If the TMEP route is approved, the TSF would need to be relocated to a suboptimal location, resulting in increased adverse impacts to the environment and to human health and safety, as well as increased costs and delays to the Ajax Mine Project.
- The Ajax Mine Project has gone through an extensive EA process. It is not a speculative project, even if it has not received all of the required approvals to date.
- The types of deposit found at this mine site are found in limited amounts globally. Eventually, such deposits get mined. It is a question of when and under what circumstances.
- The Ajax Mine Project was not denied, but referred back. It could get approved if there were to be a positive decision from Cabinet, and if KGHM was successful in having the Province of BC reconsider its decision. The next steps in advancing the Ajax Mine Project would be to re-enter the EA process and address some of the concerns raised by the Province of BC. Re-entering the EA process would take approximately 12 months, and construction could start in approximately 3-4 years.
- The likelihood of the Ajax Mine Project being accepted if it re-enters the EA process depends on how much the project is changed to address some of the concerns expressed in the Province of BC's decision.
- The challenge for the project was not the location of the TSF, but the lack of a definitive project agreement with First Nations to deal with their concerns around heritage and impacts to heritage.
- It is unlikely that the location of the TSF would change because, for a project of this scale and type, there is really only one option.
- The proposed detailed route will obstruct, interfere with, or injuriously affect the work of the Ajax Mine Project, for which preparations are being lawfully and openly made, contrary to section 79 of the NEB Act.

### ***The Commission's decision on the status of the Ajax Mine Project***

In deciding on the best possible detailed route of a pipeline in situations where a SOO Filer raises concerns relating to their own development plan on their lands, it is necessary to consider the status of that development plan. The Commission will make fact-specific determinations on a case-by-case basis. If the development plan is definitive and not speculative, the SOO Filer will have a stronger claim that its development should be avoided. This is consistent with the predecessor NEB's prior decisions. When asked, KGHM/Sugarloaf provided no legal authority as a basis for departing from that practice.

In this case, the status of the Ajax Mine Project is an important routing consideration because the proposed detailed route would traverse the location identified for the TSF, an important part of the Ajax Mine Project.

The Commission recognizes that the Ajax Mine Project is well defined; it is apparent that a significant amount of studies and effort have been invested to define and advance the proposed project. The Commission recognizes KGHM/Sugarloaf's submission that the Ajax Mine Project may obtain the necessary regulatory approvals and proceed at some time in the future, given the value of the resource proposed to be developed.

However, the Commission is not convinced of when, or if, and under what conditions, the Ajax Mine Project could or would proceed. The Commission notes that the BC Ministers of ECCS and EMP declined to issue an EA Certificate for the project. The federal government found that the project is likely to result in significant adverse environmental effects and referred it back to Fisheries and Oceans Canada and Natural Resources Canada to determine whether those effects can be justified in the circumstances, pursuant to section 37 of the *Canadian Environmental Assessment Act, 2012*.<sup>7</sup>

The Commission is not convinced of the certainty of the TSF's ultimate location. While the opinion of KGHM/Sugarloaf's witness was that the location of the TSF would not change, and that the location of the TSF was not an issue for the Stk'emlupsemc te Secwepemc of the Secwepemc Nation (SSN) or the project's regulators, there was no evidence to support this claim. Further, KGHM/Sugarloaf provided no evidence of a material change in circumstances that would suggest that the 2017 decisions are being reconsidered, or approved, in their current form, in the foreseeable future. For these reasons, the Commission is of the view that the Ajax Mine Project is speculative at this time.

KGHM/Sugarloaf requested that the Commission invoke section 79 of the NEB Act (replaced with section 336 of the CER Act) to deny the proposed detailed route on the basis that it would obstruct, interfere with, or injuriously affect the working of the mine. This provision, entitled "Protection of Mines," does not apply in these circumstances. As the Ajax Mine Project has not yet obtained the necessary approvals and has therefore not been constructed, the project is not at the stage of "opening" as contemplated by that provision.

In light of this, and having considered all of the evidence on the hearing records, the Commission has determined that the Ajax Mine Project, including the location of the TSF, is speculative at this time.

#### **4.1.2 Did Trans Mountain apply its routing criteria appropriately?**

##### ***Trans Mountain's submissions***

- The pipeline corridor was developed based on a standard set of routing criteria designed to enable the pipeline to be installed safely, and to reinforce the protection and integrity of the pipeline while minimizing the adverse effects of pipeline installation and operation to the extent practicable. During the Certificate Hearing, the NEB assessed and accepted Trans Mountain's routing criteria.

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<sup>7</sup> Repealed, 2019, c. 28 s. 9

- For its detailed route selection process, Trans Mountain applied the routing criteria and established a hierarchy of routing principles. In descending order of preference, these were:
  - 1) Where practicable, co-locate the new pipeline on or adjacent to the existing TMPL easement to:
    - reduce land use fragmentation,
    - reduce the use of unencumbered lands by utilizing the existing TMPL right-of-way (RoW) for location of the TMEP pipeline and construction workspace, and
    - leverage the existing pipeline protection program and landowner knowledge of the location and nature of the existing TMPL to optimize pipeline integrity and safety.
  - 2) Where co-location is not practicable, minimize creating new linear corridors by installing the new pipeline adjacent to existing easements or RoWs of other linear facilities, including other pipelines, power lines, highways, roads, railways, fibre optic cables, and other utilities.
  - 3) If co-location with any existing linear facility is not feasible, install the new pipeline in a new easement selected to balance safety, engineering, construction, environmental, cultural, and socio-economic factors.
  - 4) In the event a new easement was necessary, minimize the length of the new easement before returning to the TMPL easement or other RoWs.
- As a practice, determining routing feasibility for the entire TMEP included considering a range of factors, including constructability; long-term geotechnical stability; and environmental, cultural, and socio-economic suitability. In addition to adhering to the routing criteria and corridor selection strategy, Trans Mountain used a set of guidelines to enable and maintain consistent decision-making regarding route and corridor selection.
- The proposed TMEP route is consistent with its routing principles. The TMEP deviates from the TMPL to circumvent Jacko Lake, minimizing cultural or environmental impacts by providing a buffer area between the TMEP and Jacko Lake, while minimizing the length of new easement before returning to the TMPL.
- The presence of an operating mine or an existing TSF would be a physical impediment that would prevent Trans Mountain from following the existing TMPL. Trans Mountain's routing criteria would require it to circumvent the TSF and return to the TMPL as soon as possible. However, Trans Mountain would not construct a longer route for a speculative undertaking that may never occur.

#### ***KGHM/Sugarloaf's submissions***

- There is no significant disagreement with the hierarchy of routing criteria established by Trans Mountain. However, Trans Mountain did not apply its own stated routing criteria when selecting its proposed detailed route. Trans Mountain's proposed detailed route focuses on Criteria 4 – minimizing the length of any new easement and returning to the existing RoW as soon as possible. The first three of Trans Mountain's stated criteria should be applied first.



- The detailed route on the Lands conflicts with the TSF for the Ajax Mine Project. The TSF location is a factor that should be taken into account and given more weight in the routing criteria.
- If Trans Mountain could not follow the existing TMPL, it should have followed existing linear disturbances.

***The Commission's decision on Trans Mountain's application of the routing criteria***

The Commission acknowledges the NEB's recommendation regarding, and the GIC's approval of, Trans Mountain's routing criteria.

An existing or reasonably foreseeable development would have required Trans Mountain to give more weight to Criteria 3, particularly in respect of socio-economic impacts on KGHM/Sugarloaf. As the Commission finds in **Section 4.1.1**, the location of the TSF for a future Ajax Mine Project is uncertain at this time. The Commission would not expect Trans Mountain to give Criteria 3 more weight given the speculative nature of the TSF location. Further, as Figure 1 shows, Trans Mountain did apply Criteria 1. The figure shows that Trans Mountain's proposed detailed route is co-located with the existing TMPL to a greater extent than KGHM/Sugarloaf's alternate route.

When viewed as a whole, and given the speculative nature of the Ajax Mine Project, the Commission has decided that Trans Mountain appropriately applied the approved routing criteria in locating the proposed detailed route on the Lands.

**4.1.3 Should the Commission consider an alternate route outside the approved corridor?**

***Trans Mountain's submissions***

- Trans Mountain chose the TMEP corridor based on its routing criteria, which were designed to ensure pipeline safety and minimize impacts to the environment and landowners, as well as Indigenous peoples. The TMEP corridor was approved by the Federal Cabinet following the Certificate Hearing.
- The Commission should be mindful of the rigor of the Certificate Hearing, and how much information was presented and how many parties participated, the result of which is the approved corridor now under consideration in the detailed route approval process. KGHM/Sugarloaf chose to not meaningfully participate in the Certificate Hearing, which considered and ultimately approved the TMEP corridor.
- A key feature of the approved corridor is that the TMEP parallels the existing TMPL for 72 per cent of its route, and other linear disturbances for an additional 17 per cent. Paralleling an existing line or other linear corridors results in a dramatic reduction in a project's impact compared to greenfield development. Once the corridor was approved, Trans Mountain used descending routing criteria (described in **Section 4.1.2**) to determine where the detailed route should fit within the corridor.
- Changing the corridor from the GIC-approved corridor would require a variance application, resulting in a Commission regulatory proceeding. Such a process would require new engagement with Indigenous peoples and affected landowners, and public notices. Following any process, the matter would also require GIC approval. Based on the evidentiary record, there are no grounds to materially delay the TMEP by holding a lengthy Commission and GIC review process.

- The NEB's decision in Detailed Route Hearing MH-3-2007 (*Emera* decision)<sup>8</sup> considered the context where routes outside of the approved corridor can be considered in the detailed route approval process. In that case, the applied-for and approved corridor was narrow, and the NEB decided that parties could propose routes outside the approved corridor. The NEB stated, "[i]f the corridor is sufficiently wide that a landowner can propose a route off their lands but still within the corridor, the [NEB] may consider it unnecessary to consider a route outside of the corridor."

#### ***KGHM/Sugarloaf's submissions***

- The corridor is only 150 metres wide. Any detailed route location within the corridor would conflict with the TSF. Therefore, changing the corridor is required to avoid the TSF.
- The NEB's *Emera* decision stands for the proposition that the Commission can consider a route outside of the corridor where it is appropriate. Any delay to the TMEP resulting from a denial of the proposed detailed route should not be a consideration for the Commission. In the detailed route approval process, the Commission should only consider the best possible detailed route.

#### ***The Commission's decision on whether to consider alternate routes outside of the approved corridor***

The Commission agrees with KGHM/Sugarloaf that the Commission can consider an alternate route outside of the approved corridor. The Commission will not be in a position to approve a detailed route outside of the approved corridor as a result of a detailed route hearing. However, evidence of an alternate route outside of the approved corridor falls within the scope of the issue of the best possible detailed route of the pipeline, to the extent that it may assist the Commission in determining whether the applied-for detailed route is the best possible detailed route. Therefore, the Commission considered KGHM/Sugarloaf's proposed alternate route for the purpose of assessing Trans Mountain's proposed detailed route.

The Commission agrees with KGHM/Sugarloaf's submission that, should the Commission determine that Trans Mountain's proposed detailed route is not the best possible detailed route, then any delay or inconvenience associated with a variance application is a burden that Trans Mountain must bear. These considerations do not factor into the Commission's decision on whether Trans Mountain has proposed the best possible detailed route for the TMEP.

#### **4.1.4 Is the proposed detailed route superior to the alternate route?**

##### ***Trans Mountain's submissions***

- The proposed TMEP route was developed in accordance with routing criteria that were approved through the Certificate Hearing. The alternate route put forward by KGHM/Sugarloaf does not align with these routing criteria as it unnecessarily extends the length of the TMEP's deviation from the TMPL route.

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<sup>8</sup> Related to Emera Brunswick Pipeline Company Ltd.'s Brunswick Pipeline Project, page 34 ([A19976](#)).

As a twinning project, and one that the federal government has approved on the basis that 73 per cent of its route follows the existing pipeline and 90 per cent follows existing disturbances, reducing the TMEP's impacts compared to a greenfield development is a significant factor for the Commission to consider when it looks at routes outside of the approved corridor.

- The alternate route proposed by KGHM/Sugarloaf was introduced by Trans Mountain during the Certificate Hearing in its August 2014 Technical Update No. 2 ([A4A4A5](#)) and was contingent upon the mine proceeding. As of February 2015, Trans Mountain no longer carried forward this alternate route, but continued to develop it on a technical basis. Had the Ajax Mine Project been approved in December 2017, it would have moved forward with an application to change its proposed TMEP route to the alternate route.
- KGHM/Sugarloaf raised the alternate route only in late evidence filed on 6 April 2018, providing little time for additional evidence and investigations. In addition, KGHM/Sugarloaf provided no substantive information on its alternate route. The party proposing an alternate route must provide information at a level of detail sufficient to enable the Commission, Trans Mountain, and any other parties to make a reasonable comparison between the proposed and alternate routes.
- Compared to KGHM/Sugarloaf's alternate route, the proposed detailed route:
  - is shorter;
  - follows more of the existing TMPL;
  - has fewer kilometres of new corridor;
  - has fewer road and watercourse crossings, and crosses fewer woodlots; and
  - has fewer identified traditional land and resource use sites.
- Landowner agreements for any parcel along the alternate route have not been obtained, whereas, along the proposed detailed route, one private landowner has granted Trans Mountain an easement, with the remaining private lands being owned by KGHM/Sugarloaf.
- Environmental studies completed in 2014 and 2015 on the KGHM/Sugarloaf alternate route – including regarding vegetation, wetlands, soils, wildlife, aquatics, and archaeology – did not reveal any substantive differences or unique environmental features when compared to the proposed detailed route. However, additional wildlife field studies would be required on the alternate route to fulfill Certificate Condition 44 with respect to wildlife species at risk. Additional environmental studies may also be needed if the landscape has changed since 2014/15, when the last studies were conducted.
- Some engagement had taken place regarding the alternate route, including with SSN and other Indigenous peoples, but additional engagement would need to be undertaken. Given that several years have passed, previous engagement cannot be assumed to be satisfactory. An application to assess an alternate route would require additional engagement processes with landowners, the public, Indigenous peoples, and any others with an interest.
- The requirement for all of this additional work would have a material effect on the TMEP's construction timing and could seriously impact Trans Mountain and third parties, such as shippers and contractors.

Since the 2014 Technical Update No. 2, additional studies have been undertaken on the proposed detailed route to satisfy some of the Certificate conditions, and Trans Mountain has continued its engagement program with landowners and Indigenous peoples.

- The proposed detailed route, which is constructible and aligns with Trans Mountain's approved routing criteria, is the best route for the TMEP on the Lands.
- Should the Ajax Mine Project be approved with a final mine plan, Trans Mountain would accommodate it by relocating the pipeline. The existing TMPL would also be subject to relocation. This is consistent with the past when a portion of the TMPL on the Lands was relocated to accommodate the development of a small pit to extend the Afton Mine.

### ***KGHM/Sugarloaf's submissions***

- The alternate route would circumvent the proposed TSF site, briefly join Trans Mountain's proposed detailed route west of Jacko Lake, and deviate again from the proposed detailed route north of Jacko Lake, before rejoining the proposed detailed route (see Figure 1).
- While the alternate route would extend the TMEP's length, it is for the specific reason of avoiding the TSF, which is a necessary action. Where the alternate route deviates from the proposed detailed route at the north end, an offset of several hundred metres was designed to accommodate further protection to the pipeline from mine operations, and to allow access around the back side of the pit. The deviation at the south end is to accommodate the toe of the embankment that runs along much of the west side of the TSF and the buttress that would support it further.
- The alternate route parallels or stays along KGHM/Sugarloaf lands for as long as possible before reaching their termination at the southern portion of the route.
- The alternate route is the same as an alternate route proposed by Trans Mountain in August 2014 during the Certificate Hearing. Much of the alternate route was designed by Trans Mountain to accommodate KGHM/Sugarloaf's planned infrastructure as of May 2014. Trans Mountain would have conducted extensive investigations of this alternate route in order to propose it as an alternative in 2014.
- Additional stakeholder engagement and field investigations would not need to be conducted for the alternate route. The alternate route and Trans Mountain's proposed detailed route are very similar in terms of safety, engineering, construction, environmental, cultural, and socio-economic factors.
- Since the pipeline will have an indefinite lifespan, it does not make sense to build a section that will remain in place for a relatively short period of time. It would be more economical and practical to reroute the pipeline outside of the corridor now, rather than have to build, abandon, and rebuild it elsewhere at a later date. This would result in less environmental damage, and relocation costs would be avoided.

### ***The Commission's decision on whether the proposed detailed route is superior to the alternate***

Having found in **Section 4.1.1** that the Ajax Mining Project is speculative, and that the location of any future TSF is uncertain, the Commission has decided that it is preferable for the TMEP to twin the TMPL to the extent possible than to avoid the proposed TSF site.

The Commission is of the view that KGHM/Sugarloaf's alternate route was designed essentially to avoid the TSF associated with the Ajax Mine Project. However, the Commission also considered whether other features of the alternate route demonstrate that Trans Mountain's proposed detailed route is not the best possible detailed route across the Lands.

While the Commission notes that certain aspects of the alternate route appear to be superior – including, for example, that the alternate route crosses fewer parcels of land and wetland, and affects no water wells – the Commission must assess the entirety of both the proposed and alternate routes, balancing several factors.

Having assessed the proposed and alternate routes, including balancing their respective advantages and disadvantages, the Commission has decided that Trans Mountain's proposed detailed route is superior to the alternate route. The proposed detailed route follows the approved routing criteria outlined in **Section 4.1.2**, including paralleling more of the existing TMPL than the alternate. In addition, the Commission is swayed by the comparison provided in Trans Mountain's reply evidence showing that the proposed detailed route involves fewer road crossings and crosses fewer woodlots. The Commission places considerable weight on the fact that the proposed detailed route has potential impacts on fewer sites identified as important by Indigenous peoples and wildlife habitat areas for species at risk.

Both parties appear to agree that, if the Ajax Mine Project were to proceed in the future, the TMEP would need to be relocated. This is a hypothetical scenario based on a speculative mining project; however, KGHM/Sugarloaf argues that the TMEP should be routed to avoid the cost and harm associated with having to relocate it in the future. The Commission accepts that this hypothetical scenario is a possibility, and sees value in attempting to avoid the impact associated with having to relocate the pipeline. However, the Commission is of the view that such a scenario cannot be avoided with reasonable certainty at this time, given the speculative nature of the Ajax Mine Project. The Commission agrees with Trans Mountain that it would not be prudent to route a pipeline to avoid a speculative mining project with the possibility that such a route, involving greenfield development with its associated environmental and socio-economic impacts, may turn out to be unnecessary if the Ajax Mine Project were to change or not proceed.

Further, the Commission is of the view that, even in the event that the speculative Ajax Mine Project were to occur in the future, the presence of the TMEP would not prevent it from proceeding, and it does not prevent the TSF from being located in the current proposed site. A commercial arrangement could be made and the pipeline could be relocated, if necessary, consistent with the past relocation of the TMPL related to the Afton Mine. The Commission notes that, if the Ajax Mine Project were to proceed and the TSF were to be located where it is presently proposed, the existing TMPL, which is currently situated at that location, would need to be relocated in any event.

***The Commission's overall decision on whether the proposed detailed route is the best possible detailed route***

Having considered the record, including Trans Mountain's commitments, the Commission has decided that Trans Mountain's proposed detailed route is the best possible detailed route across the Lands.

Overall, the Commission is of the view that Trans Mountain's application of the routing criteria was appropriate in the circumstances, given the speculative nature of the Ajax Mine Project at this time. The Commission is satisfied that there is currently no better routing option.

**5 Are Trans Mountain's proposed methods and timing of constructing the TMEP pipeline the most appropriate?**

***Trans Mountain's submissions***

- Trans Mountain will discuss the TMEP construction plan and schedule with KGHM/Sugarloaf. The final construction schedule will be determined by, among other things, regulatory approval, seasonal restrictions, and contractor availability.
- With regards to the methods of construction, Trans Mountain proposes to employ conventional open-cut construction on the Lands. With a conventional footprint, the construction corridor is approximately 45 metres wide. However, depending upon the specific circumstances on a particular land parcel, this width may vary to allow for the safest and most productive construction methods that would limit the amount of time required to build a section of pipeline.
- Trans Mountain will work with KGHM/Sugarloaf to establish access plans to minimize disruption from construction activities. Construction will follow the Project Safety Plans for the safety of workers and the public in direct proximity to work zones, which will include securing the site to prevent unauthorized or unintended access by the public.

***KGHM/Sugarloaf's submissions***

- KGHM/Sugarloaf did not raise concerns with the proposed methods and timing of constructing the TMEP pipeline.

***The Commission's decision on whether the proposed methods and timing of constructing the TMEP pipeline are the most appropriate***

Having considered all of the evidence, including Trans Mountain's commitments, the Commission has decided that Trans Mountain's proposed methods and timing of constructing the TMEP pipeline across the Lands are the most appropriate.

**6 Conclusion**

Having decided that Trans Mountain's proposed detailed route is the best possible detailed route on the Lands, and that the proposed methods and timing of construction are the most appropriate, the Commission will approve the PPBoR for the Lands.

Any future order approving the PPBoR for the Lands will include conditions requiring Trans Mountain to list and fulfill the commitments it made in the course of these detailed route hearings, and to update its alignment sheets.

Trans Mountain is also reminded that the relevant conditions of approval in Certificate OC-065 apply to the construction and operation of the TMEP pipeline on the Lands.

For any questions, please contact a Process Advisor by phone at 1-800-899-1265 (toll-free), or by email at [TMX.ProcessHelp@cer-rec.gc.ca](mailto:TMX.ProcessHelp@cer-rec.gc.ca).

Yours sincerely,

*Original signed by*

L. George  
Secretary of the Commission

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