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To: All participants in the Segment 5, 6, and 7 detailed route hearings<sup>1</sup>

**Trans Mountain Pipeline ULC (Trans Mountain)  
Trans Mountain Expansion Project (TMEP)  
All Segment 5, 6, and 7 detailed route hearings (Hearings)<sup>1</sup>  
Hearing process modifications and Indigenous knowledge**

**A. Background**

The Commission of the Canada Energy Regulator (Commission) issued Hearing Orders for the Segment 2, 3, and 4 Hearings in November 2019, and for the majority of the Segment 5, 6, and 7 Hearings in in January 2020.

The Hearing Orders set out the hearing steps and deadlines for each Hearing, including an in-person oral portion where the parties could cross-examine (question) each other about their respective evidence, and provide argument. The Segment 5, 6, and 7 Hearings included an opportunity for SOO Filers to request that the Commission conduct a site visit.

Phase 1 of the S'ólh Téméxw Stewardship Alliance (STSA) Hearing (MH-027-2020) also contemplated that the STSA would share Indigenous knowledge in-person with the Commission.

**B. The COVID-19 pandemic**

As the Commission is doing, participants are encouraged to remain up-to-date on the messages from the public health authorities by checking these websites:

Canada [www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection.html](http://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection.html)

British Columbia [www.bccdc.ca/health-info/diseases-conditions/covid-19](http://www.bccdc.ca/health-info/diseases-conditions/covid-19)

Alberta [www.alberta.ca/COVID19](http://www.alberta.ca/COVID19)

In response to the COVID-19 pandemic, the Commission issued a Procedural Direction on 20 March 2020 ([C05377](#)) granting an extension to certain filing deadlines. The Commission noted the Canada Energy Regulator's (CER) dedication to the safety and well-being of its staff, Indigenous peoples, the public, and all those with whom it works closely.

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<sup>1</sup> With the exception of the following Hearings (current SOO Filers in parentheses): MH-005-2020 (Compulogic Systems Inc. and Coldwater Indian Band Phase 2), MH-016-2020 (Barbara Gard and STSA Phase 3), MH-029-2020 (STSA Phase 3), and MH-030-2020 (Coldwater Indian Band Phase 2). For these Hearings, Hearing Orders have not yet been released.

The Commission advised that it was looking at alternative ways to optimize participant involvement to ensure that the Hearings continue in a manner that is fair and transparent, while protecting the health of those involved.

On 31 March 2020 ([C05541](#)), the Commission issued another Procedural Direction in which it postponed all deadlines and announced that it was considering process options for the Hearings. The Commission assured participants that it would establish processes that allow people to maintain physical distancing as required by federal and provincial public health authorities. It added that it would not undertake any process that requires anyone to meet in-person with others from outside their household, whether that is inside or outside their home.

### **C. Hearing process modifications**

At this time, the Commission is releasing and attaching two Procedural Directions ([C05817-3](#) and [C05817-5](#)) setting out revised steps and deadlines for the Hearings.

The Commission is also seeking (through an additional attached letter [\[C05817-7\]](#)) to work with the STSA to identify alternative means by which Indigenous knowledge can be shared, in place of the previously planned in-person Indigenous knowledge portion of Hearing MH-027-2020.

#### **i) Site visits**

Subsection 202(5) of the *Canadian Energy Regulator Act* (CER Act) provides that the Commission may, as it considers necessary, inspect the lands that are proposed to be acquired, leased, taken or used, or that are affected by, pipeline construction. The Commission refers to such an inspection as a “site visit.” The Hearing Orders for Segments 5, 6, and 7 allowed SOO Filers to request, by the deadline for written evidence, a site visit. The Commission noted that scheduled site visits may be cancelled or rescheduled due to scheduling conflicts, or safety and security concerns.

Given the directives of the public health authorities to refrain from travel and maintain physical distancing, the Commission has decided that it will not conduct site visits to provide visual context for written evidence. Further, the Commission is of the view that these land inspections are not necessary. Areas or features of particular concern can be identified by SOO Filers by filing photographic and/or video evidence as part of their written evidence.

#### **ii) In-person oral sessions**

Section 202 of the CER Act provides:

202 (1) If a written statement is filed with the Regulator under subsection 201(3) or (4) within the period set out in that subsection, the Commission must order that a public hearing be held.

(2) The Commission must select a region in which to hold the hearing that it considers convenient for persons who filed a written statement under subsection 201(3) or (4) and must provide reasons for its selection, including the factors that it took into account.

(3) The Commission must fix a suitable time and place for the hearing and cause notice of the time and place to be given by publishing it in at least one issue of a publication, if any, in general circulation within the area in which the lands are

situated and by sending it to each person who filed a written statement under subsection 201(3) or (4).

(4) At the time and place fixed for the hearing, the Commission must hold a hearing and must permit each person who filed a written statement under subsection 201(3) or (4) to make representations and may, if the Commission considers it appropriate to do so, allow any other interested person to make representations before it.

These CER Act provisions guided the Commission's original plan to allow parties to test evidence through cross-examination and to provide argument at in-person oral sessions.

In a 8 January 2020 Procedural Direction ([C04002](#)), the Commission announced Spruce Grove and Edmonton, Alberta, as well as Kamloops, British Columbia, as the locations for the oral portions of the Segment 2, 3, and 4 Hearings.<sup>2</sup> In accordance with subsection 202(2) of the CER Act, the Commission outlined the following factors that it took into account in determining the locations for the oral portions:

- the location of the lands at issue;
- the location of each SOO Filer's and/or their authorized representative's residences;
- **the availability of facilities that meet the Commission's requirements for the oral sessions, including with respect to safety**, security, accessibility, transcript production, availability of accommodations, etc.; and
- fiscal and procedural efficiency.

*[emphasis added]*

The current COVID-19 pandemic represents extraordinary circumstances. As noted above, public health authorities require the Commission – and Canadians in general – to refrain from travel and to maintain physical distancing. Accordingly, the Commission is of the view that there are presently no facilities that meet the Commission's safety requirements for in-person sessions. Further, the length of time that such conditions will continue to persist is uncertain. The Commission's priority is to protect the health and safety of everyone involved in its Hearings, especially during the pandemic.

The Commission is mindful that Cabinet has determined that the TMEP is in the public interest. The preamble to the CER Act includes the following:

Whereas the Government of Canada is committed to enhancing Canada's global competitiveness by building a system that enables decisions to be made in a predictable and timely manner, providing certainty to investors and stakeholders, driving innovation and enabling the carrying out of sound projects that create jobs for Canadians;

The purpose of the CER Act is stated in section 6, and includes ensuring that:

(d) ...regulatory hearings and decision-making processes related to...energy matters are fair, inclusive, transparent and efficient.

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<sup>2</sup> In each Hearing, the oral portion did not take place as planned because the statement of opposition was withdrawn.

Further, section 31 of the CER Act provides:

(3) All applications and proceedings before the Commission must be dealt with as expeditiously as the circumstances and procedural fairness and natural justice permit but, in any case, within any time limit provided for under this Act.

The Commission is of the view that adjourning the Hearing processes for an indeterminate length of time is not necessary or appropriate since reasonable alternative means of proceeding exist. Considering the uncertain duration of the pandemic, as well as the efficiency and certainty goals expressed in the CER Act, the Commission has determined that completing the Hearings in writing, with the option to provide argument by teleconference (as set out in the attached Procedural Directions), is convenient for SOO Filers.

**iii) Phase 1 of the STSA Hearing**

In establishing the Hearing processes for potentially affected Indigenous peoples, the Commission considered the following portions of the CER Act preamble:

Whereas the Government of Canada is of the opinion that the [independent energy regulatory] body should be reflective and respectful of the diversity of Canada, including with respect to the Indigenous peoples of Canada, and of its regional diversity and bilingual nature;

Whereas the Government of Canada is committed to achieving reconciliation with First Nations, the Métis and the Inuit through renewed nation-to-nation, government-to-government and Inuit-Crown relationships based on recognition of rights, respect, co-operation and partnership;

Whereas the Government of Canada is committed to implementing the United Nations Declaration on the Rights of Indigenous Peoples;

Whereas the Government of Canada is committed to using transparent processes that are built on early engagement and inclusive participation and under which the best available scientific information and data as well as Indigenous knowledge are taken into account in decision-making;

In addition, the Commission considered the CER Act preamble and provisions regarding timely decisions, efficiency, and expeditious proceedings noted above in deciding to modify Phase 1 of the STSA Hearing as set out in the attached Procedural Direction specific to this Hearing ([C05817-5](#)). These preambles were also considered in establishing a comment process with respect to Indigenous knowledge, as set out in the attached letter ([C05817-7](#)).

Recognizing that communities of Indigenous peoples share their knowledge and lessons through an oral tradition from generation to generation, the Hearing Order for Phase 1 of the STSA Hearing afforded the STSA the opportunity to share Indigenous knowledge orally at an in-person session. Since the Commission's priority, especially during the pandemic, is to protect the health and safety of everyone involved in its Hearings, including participating Elders and knowledge holders, the Commission has decided that it cannot hear Indigenous knowledge in-person at this time.

Further, the length of time that such conditions will continue to persist is uncertain and it may not be appropriate to wait until it is safe to conduct an in-person Indigenous knowledge session. The Commission is therefore seeking to work with the STSA to identify alternative means by which Indigenous knowledge can be shared, which would supplement that which the STSA has already provided in its written evidence. To this end, the Commission has established a comment process in order to solicit **Trans Mountain's and the STSA's** comments and suggestions on how this might be achieved. The Commission welcomes and values the information and knowledge that the STSA wishes to share and that may meaningfully inform the Commission's detailed routing decisions within the traditional territories of the STSA's member First Nations.

#### **D. Reimbursement of costs**

The Commission reminds parties that section 206 of the CER Act allows a party to seek reimbursement of costs – to be paid by Trans Mountain – related to their participation in their Hearing. A party should discuss costs with Trans Mountain first, with the aim of coming to an agreement. Trans Mountain's contact for this purpose is Mr. Alain Parisé (1-866-514-6700, [TMEP\\_Land@transmountain.com](mailto:TMEP_Land@transmountain.com)).

If the parties are unable to come to an agreement with respect to the amount or nature of costs to be reimbursed, either party may request that the Commission hear and decide the matter.

The process details about how this works can be found in the [National Energy Board Rules of Practice and Procedure, 1995](#). Any requests for the reimbursement of costs will be considered by the Commission **independently from the detailed route hearing processes**.

#### **E. Filing documents during the pandemic**

During the pandemic, CER staff are not in the office to process filings received by mail or fax.

All participants are reminded that filings should be made using the online [e-filing tool](#). The requirement to file a hard copy within three business days is postponed until further notice. Hard copies should be prepared, along with a signed receipt, and provided to the CER at a later date. If experiencing difficulties filing a document through the e-filing tool, it may be emailed to [secretary@cer-rec.gc.ca](mailto:secretary@cer-rec.gc.ca) (emailed documents must be in PDF format 10 MB or less in size). More information about the CER's response to the COVID-19 pandemic is available in its [March 16 update](#).

For any questions, please contact a Process Advisor by phone at 403-560-7323 or 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

Attachments

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