



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

To: All participants in the Segment 5, 6, and 7 detailed route hearings¹

**Trans Mountain Pipeline ULC (Trans Mountain)
Trans Mountain Expansion Project
All Segment 5, 6, 7 detailed route hearings (Hearings)¹
Procedural Direction – Revised steps and deadlines**

A. Process modifications

For the reasons set out in the cover letter ([C05817-1](#)) to this Procedural Direction, in light of the current COVID-19 pandemic and the advice of federal and provincial public health authorities aimed at protecting public health, the Commission of the Canada Energy Regulator (Commission) has made the following modifications to the Hearings. See **Part C** below for new or revised guidance on individual steps. The previously issued Hearing Orders remain applicable with the exception of the changes noted in this Procedural Direction.

Participants will note that the Commission has not set out details about all Hearing steps at this time. Rather, decisions on the timing and methods of carrying out certain steps will be made in future so that they are informed by the most current and accurate information at the time.

i) Site visits

The Commission will **not** be conducting site visits to provide visual context for written evidence. Rather, SOO Filers may include photographs and/or videos as part of their evidence in order to depict areas or features of particular concern on the lands at issue. Any photos and/or videos provided will be considered evidence themselves.

ii) Reply evidence

As the Commission continues to work with the S'ólh Téméxw Stewardship Alliance to determine how to receive further Indigenous knowledge in its overlapping MH-027-2020 Hearing, and considering that reply evidence in all of the Hearings must be filed after all other evidence has been received, steps and deadlines pertaining to reply evidence will be determined at a future date.

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¹ 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 the S'ólh Téméxw Stewardship Alliance [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 has issued a separate Procedural Direction ([C05817-5](#)) outlining revised steps and deadlines for Hearing MH-027-2020 (STSA Phase 1).

iii) In-person oral sessions

General

Since the Commission's priority is to protect the health of everyone involved in its Hearings, especially during the pandemic, it has decided that it will **not** be holding in-person oral cross-examination and argument sessions. Rather, the Commission will use other methods to gather the same type of information that it would have received during these in-person oral sessions.

Questioning of evidence

The Commission has decided to replace oral cross-examination with written questions (called "**information requests**" or "**IRs**").

SOO Filers and intervenors (if any) will have the opportunity to file two rounds of IRs about Trans Mountain's evidence in the Hearing(s) they are involved in.

Trans Mountain, SOO Filers, and intervenors (if any) will also have the opportunity to file one round of IRs about the evidence of intervenors (if any) and other SOO Filers in the Hearing(s) they are involved in.

Argument

So long as it remains unsafe to hold in-person oral sessions at the time of argument, the Commission will allow SOO Filers the choice of providing argument by phone (teleconference) or in writing. The Commission will canvass SOO Filers regarding their preferences later in the process. The form of argument that Trans Mountain and intervenors (if any) provide in each Hearing will be determined by that of the SOO Filer(s) in that Hearing. Specifics regarding how argument will proceed will be communicated at a later time.

B. Revised table of steps and deadlines

The table below replaces the table of steps and deadlines included in each of the various Hearing Orders. Guidance and information about new or revised steps is provided in **Part C** below.

Not all Hearings involve the participation of intervenors and/or commenters. Intervenor or commenter status is provided only to those who were granted that status in the 2017/18 Hearings being resumed. Steps involving intervenors or commenters are specific to the Hearing(s) in which they are involved.

Hearing step (responsible person[s] in bold)	Date or deadline (3:00 pm Pacific time [4:00 pm Mountain time])
SOO Filers and intervenors (if any) file Round 1 IRs regarding Trans Mountain's written evidence	5 May 2020
Trans Mountain files responses to Round 1 IRs	20 May 2020
SOO Filers and intervenors (if any) file Round 2 IRs regarding Trans Mountain's written evidence	27 May 2020
Trans Mountain files responses to Round 2 IRs	4 June 2020
SOO Filers and intervenors (if any) file written evidence or supplemental evidence, ² including photographs and/or videos depicting areas or features of particular concern	18 June 2020
Commenters (if any) file letters of comment	18 June 2020
Trans Mountain, overlapping SOO Filers, and intervenors (if any) file IRs regarding SOO Filers' and any intervenors' written evidence	26 June 2020
SOO Filers and intervenors (if any) file responses to IRs asked of them	9 July 2020
Reply evidence phase (timing to be determined) <i>This phase allows SOO Filers and intervenors (if any) to reply to evidence filed by other SOO Filers or intervenors, followed by Trans Mountain's reply evidence</i>	To be determined
Argument phase (timing and methods to be determined)	to be determined
Commission issues decision	within 12 weeks after the Hearing record closes

C. Guidance for individual steps

Participants should continue to refer to the original Hearing Orders for guidance and direction on particular steps. The information provided below supplements that guidance in light of the process modifications announced by the Commission.

² The Commission notes that evidence has already been received from Hugh Gray (in Hearing MH-018-2020) and Yvonne and Sabina Blieberger (in Hearing MH-022-2020). These SOO Filers may, but are not required to, file evidence supplemental to that already filed by the new deadline indicated for SOO Filers' written evidence.

i) Filing IRs

Anyone asking IRs of another party must identify the **Hearing number** that the IRs relate to. It must also be clear **who the IRs are being asked of** (i.e., Trans Mountain, a particular SOO Filer, or a particular intervenor). To ensure that the party being asked IRs is aware of the IRs, it is important for the asking party to inform the receiving party when those IRs are filed (see the List of Participants for contact information ([C03144](#)), and the Hearing Orders for further guidance).

Parties **cannot** ask IRs of commenters or of parties that agree with or share positions about the issue being asked about (i.e., IRs must be asked of parties **adverse** in interest).

IRs must:

- relate to the evidence that has been filed by the particular party being asked the IRs;
- be relevant to the issues being considered in the Hearing to which the IRs relate; and
- be reasonable (the Commission will not compel a party to respond to an IR if it amounts to a “fishing expedition” that could unfairly burden the responding party).

Appendix 1 is an optional template that parties may use when writing their IRs. If parties choose a different format, the information set out in the template must still be included. If a party wishes to receive an editable electronic version, they may contact a Process Advisor.

ii) Responding to IRs

Any party (Trans Mountain, SOO Filers, and intervenors) that filed evidence must respond to IRs asked of them about that evidence, provided the IRs meet the criteria explained above. Any party that does not answer an IR asked of them must provide justification for not doing so. The Commission may attach less importance or “weight” to a party’s evidence if they fail to respond to an IR without a valid reason.

Commenters are not required to respond to any IRs that may be asked of them.

iii) SOO Filers’ written evidence

As set out above, the Commission will not be conducting site visits. Instead, SOO Filers may include photographs and/or videos as part of their evidence in order to depict areas or features of particular concern on the lands at issue.

With respect to the filing of video evidence, as noted in **Part D** below, Canada Energy Regulator (CER) staff are not in the office during the pandemic to receive media stored on physical devices, such as USB memory sticks or DVDs. Therefore, if a SOO Filer wishes to include a video in its evidence, they should contact a Process Advisor at TMX.ProcessHelp@cer-rec.gc.ca for directions on how to do so.

As stated in the Hearing Orders, if a SOO Filer and/or intervenor wishes to identify an alternate pipeline route for the Commission’s consideration in determining whether Trans Mountain’s proposed route is the best possible detailed route, they must file details of the alternate route as part of their written evidence.

The City of Chilliwack and the Township of Langley are reminded that they are responsible for filing evidence in each of the Hearings in which they are listed as a SOO Filer, and in which they wish to participate.

SOO Filers are also reminded that an optional evidence template is attached to their respective Hearing Orders. If a SOO Filer wishes to receive an editable electronic version, it may contact a Process Advisor.

D. 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 (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](#).

E. Notices of motion

As noted in the Hearing Orders, if a party wants to ask the Commission to do something, it must file a request referred to as a "notice of motion." A notice of motion may be used to ask the Commission to require a party to provide a better or more complete response to an IR. Notices of motion must be filed as soon as possible. Late notices of motion may disrupt the Hearing schedule, which has been set to make the Hearings fair, inclusive, transparent, and efficient, and to provide certainty to all those involved. Accordingly, if a notice of motion is not filed on a timely basis, the Commission may decide that it will **not** consider it.

F. Meeting deadlines

As noted in the Hearing Orders, if a participant cannot meet a deadline, it must file a request for an extension sufficiently in advance of the deadline. The Hearing Orders provide information on what such a request must include.

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.

Yours sincerely,

Original signed by

L. George
Secretary of the Commission

c.c. Trans Mountain Canada Inc., General inbox, Email info@transmountain.com

Appendix 1

Template for writing IRs

Trans Mountain Pipeline ULC (Trans Mountain) Trans Mountain Expansion Project (TMEP)

Information request (IR)

Detailed route hearing number	
Party asking the IR	
Party being asked the IR	
IR Round #	(i.e., 1 or 2)

Topic:

- If you have many questions, it can be helpful (and more manageable) to organize them by topic. Indicate a high-level topic category (e.g., method of construction, timing of construction, route, temporary work space, reclamation).

References:

- Include one or more references to allow participants and the Commission to find the document that led to your question. All references must be documents (filings) that are on the Canada Energy Regulator's public registry (sometimes called REGDOCS). Each filing has a unique filing identification number that appears at the beginning of the title of that filing. Page number(s) should also be included.

Example reference style:

Reference 1: C04465, Commission, Letter, Hearing Order and Notice of Hearing - New and resumed Segment 6 detailed route hearings that overlap geographically with the Township of Langley and the S'ólh Téméxw Stewardship Alliance, PDF page 6

Preamble:

- Summarize what was said in the reference that has caused you to ask the question.
- Briefly describe why you feel that more information is required on that topic.

Specific, pointed questions:

- For each specific question, identify the reference from above to which it relates.
- The more specific and pointed questions are, the more likely it is that the party being asked the question will be able to understand what is being asked, and to provide the desired information.
- If you have more than one question, number your questions.

Template for writing IRs (cont'd)

Example question style:

In Reference 1, [provide wording to what is said in the reference that you wish to highlight].

Question:

Important notes about IRs:

- You can only ask IRs of a party that filed evidence.
- IRs can only be asked of parties who are “adverse in interest” to you (i.e., you cannot ask IRs of parties that agree with you or share your position about the issue).
- IRs cannot be asked of a commenter about their letter of comment.