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

To: All parties to Detailed Route Hearing MH-027-2020

**Trans Mountain Pipeline ULC (Trans Mountain)
Trans Mountain Expansion Project
Detailed Route Hearing (Hearing) MH-027-2020 – S'ólh Téméxw Stewardship Alliance
(STSA) [Phase 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 Hearing. See **Part C** below for new or revised guidance on individual steps. The previously issued Hearing Order ([C04468](#)) remains applicable with the exception of the changes noted in this Procedural Direction.

Recognizing that communities of Indigenous peoples share their knowledge and lessons through an oral tradition from generation to generation, the Commission has issued a letter ([C05817-7](#)) today to the STSA in which it is seeking 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.

The STSA 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.

The Commission also points to the separate Procedural Direction it issued today ([C05817-3](#)) in relation to the Segment 5, 6, and 7 Hearings. The STSA should refer to that Procedural Direction as it sets out process and deadline modifications pertaining to Phase 2 of the STSA Hearing.

i) Site visits

The Commission will **not** be conducting site visits to provide visual context for written evidence filed. The Commission notes that the STSA did not request a site visit in this Hearing at the time that it filed its written evidence.

.../2

Should the STSA wish to depict areas or features of particular concern on the lands at issue, it may include photographs and/or videos as part of any supplemental evidence it may file (see **Parts B and C** regarding this step). Any photos and/or videos provided will be considered evidence themselves.

ii) Reply evidence

As the Commission continues to work with the STSA to identify alternative means by which Indigenous knowledge can be shared, and considering that reply evidence must be filed after all other evidence has been received, steps and deadlines pertaining to reply evidence will be determined at a future date.

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**").

The STSA will have the opportunity to file two rounds of IRs about Trans Mountain's evidence. Trans Mountain will also have the opportunity to file one round of IRs about the STSA's evidence.

Argument

So long as it remains unsafe to hold in-person oral sessions at the time of argument, the Commission will allow the STSA the choice of providing argument by phone (teleconference) or in writing. The Commission will canvass the STSA regarding its preference later in the process. The form of argument that Trans Mountain provides will be determined by that of the STSA. 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 the Hearing Order. Guidance and information about new or revised steps is provided in **Part C** below.

| Hearing step (responsible person[s] in bold) | Date or deadline (3:00 pm Pacific time [4:00 pm Mountain time]) |
|---|--|
| STSA files Round 1 IRs regarding Trans Mountain's written evidence | 5 May 2020 |
| Trans Mountain files responses to Round 1 IRs | 12 May 2020 |
| STSA files Round 2 IRs regarding Trans Mountain's written evidence | 20 May 2020 |
| Trans Mountain files responses to Round 2 IRs | 26 May 2020 |
| STSA files supplemental written evidence (if any), including photographs and/or videos depicting areas or features of particular concern | 2 June 2020 |
| Trans Mountain files IRs regarding STSA's written evidence | 8 June 2020 |
| STSA files responses to IRs asked of them | 15 June 2020 |
| Trans Mountain files reply evidence | 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

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

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**. 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 Order for further guidance).

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 the STSA may use when writing their IRs. If the STSA chooses a different format, the information set out in the template must still be included. If the STSA wishes to receive an editable electronic version, it may contact a Process Advisor.

ii) Responding to IRs

Any party (Trans Mountain or the STSA) that filed evidence must respond to IRs asked of them about that evidence, provided such 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.

iii) Supplemental written evidence

The STSA may file written evidence, in addition to that filed on 12 March 2020, to address evidence provided by Trans Mountain in response to IRs. As set out above, the STSA may also include photographs and/or videos as part of its supplemental 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 the STSA wishes to include audio or video in its evidence, it should contact the process advisor at TMX.ProcessHelp@cer-rec.gc.ca for directions on how to do so.

The STSA is reminded that an optional evidence template is attached to the Hearing Order. If the STSA 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 Section 7.3 of the Hearing Order, 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 Hearing 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 Section 7.2.3 of the Hearing Order, if a participant cannot meet a deadline, it must file a request for an extension sufficiently in advance of the deadline. The Hearing Order provides 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.

Example question style:

Template for writing IRs (cont'd)

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.