



Canada Energy
Regulator

Régie de l'énergie
du Canada

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File OF-Fac-Oil-T260-2013-03 61
2 February 2021

To: All parties to the MH-001-2021 proceeding

**Trans Mountain Pipeline ULC (Trans Mountain)
Trans Mountain Expansion Project (Project)
Hearing Order MH-001-2021
Notice of Motion and Notice of Constitutional Question
Dated 15 December 2020 (Motion)
Canada Energy Regulator Order MO-002-2021**

On 15 December 2020, Trans Mountain filed a Motion with the Commission of the Canada Energy Regulator (Commission) with respect to the Project.

The Commission has decided to grant, in substantial form, the relief sought in paragraphs 1(a) and (b) of the Motion, as more particularly set out in the attached Order MO-002-2021. The Commission's written reasons for its decision will follow.

Yours sincerely,

Signed by

Jean-Denis Charlebois
Secretary of the Commission

Attachment



ORDER MO-002-2021

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

IN THE MATTER OF Certificate of Public Convenience and Necessity OC-065 (Certificate) held by Trans Mountain Pipeline ULC as General Partner of Trans Mountain Pipeline L.P. (collectively, Trans Mountain) in respect of the Trans Mountain Expansion Project (Project) and related orders; and

IN THE MATTER OF a 15 December 2020 Notice of Motion and Notice of Constitutional Question (Motion) filed by Trans Mountain, which requests relief pursuant to sections 32, 34 and paragraph 313(i) of the CER Act, and pursuant to Condition 1 of the Certificate.

BEFORE the Commission of the Canada Energy Regulator (Commission) on 2 February 2021.

WHEREAS Trans Mountain filed the Motion on 15 December 2020;

AND WHEREAS the Commission held Hearing MH-001-2021 to consider the Motion;

AND WHEREAS the Commission has determined that the notice requirements for a Constitutional Question have been met;

AND WHEREAS the Commission has decided to grant the relief sought in paragraphs 1(a) and (b) of the Motion in substantial form, as more particularly set out in this Order, with reasons to follow;

IT IS ORDERED THAT:

1. Pursuant to Condition 1 of the Certificate, Trans Mountain is relieved of the requirement of Condition 2 of the Certificate, insofar as it requires Trans Mountain to obtain tree cutting permits under section 3 of Burnaby Tree Bylaw No. 10482 (Tree Bylaw) for the Project-related tree clearing that is the subject of Trans Mountain's 7 December 2020 application for tree cutting permit, as amended on 18 December 2020 (Tree Clearing);
2. Pursuant to sections 32 and 34 of the CER Act:
 - a) The constitutional question raised in paragraph 3 of the Motion is answered in the affirmative;
 - b) Section 3 of the Tree Bylaw is inapplicable and inoperative to the Tree Clearing;

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- c) Trans Mountain may proceed with the Tree Clearing in the absence of the City of Burnaby having issued tree cutting permits under section 6 of the Tree Bylaw for the Tree Clearing. The foregoing does not relieve Trans Mountain of any other applicable legal and regulatory requirements; and
- d) For greater certainty, the above relief does not absolve Trans Mountain from compliance with Condition 2 insofar as that condition requires compliance with other relevant City of Burnaby bylaws, including any other section of the Tree Bylaw that otherwise remains applicable and operative.

THE COMMISSION OF THE CANADA ENERGY REGULATOR

Signed by

Jean-Denis Charlebois
Secretary of the Commission