



Canada Energy  
Regulator

Régie de l'énergie  
du Canada

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## LETTER DECISION

File OF-Fac-Oil-T260-2013-03 61  
25 February 2022

To: All participants in the MH-005-2021 proceeding

**Trans Mountain Pipeline ULC (Trans Mountain)  
Trans Mountain Expansion Project  
Certificate of Public Convenience and Necessity OC-065 (Certificate)  
and Orders XO-T260-003-2017, MO-066-2018, and XO-T260-010-2016  
(Associated Orders)  
MH-005-2021  
Notice of Motion and Constitutional Question dated 2 December 2021  
Letter Decision and Order MO-010-2022**

### A. Background

On 2 December 2021, Trans Mountain filed a Notice of Motion and Constitutional Question (**Motion**) [[C16404](#)] with the Canada Energy Regulator. The Commission of the Canada Energy Regulator (**Commission**) held the MH-005-2021 proceeding in respect of the Motion.

Trans Mountain raised a Constitutional Question as to whether certain provisions of the City of Burnaby's (**City**) Bylaw No. 13658, *Burnaby Building Bylaw 2016* (1 January 2017) [**Building Bylaw**]; Bylaw No. 11148, *Burnaby Plumbing Bylaw 2000* (2 October 2000) [**Plumbing Bylaw**]; and Bylaw No. 6494, *Burnaby Electrical Bylaw 1974* (15 October 1974) [**Electrical Bylaw**] are inapplicable, invalid, or inoperative in respect of all work related to buildings and structures at the Burnaby Terminal and the Westridge Marine Terminal authorized by the Certificate and Associated Orders (**Terminal Work**) under the doctrines of interjurisdictional immunity and/or federal paramountcy.

Trans Mountain requested that the Commission issue an Order:

- a) granting relief pursuant to Condition 1 from Condition 2 of the Certificate and Associated Orders, insofar as it requires Trans Mountain to obtain from the City the permits, occupancy certificates, and other authorizations required by the Building Bylaw, Plumbing Bylaw, and Electrical Bylaw (**collectively, the Permits**) for the Terminal Work;
- b) declaring, pursuant to sections 32 and 34 and paragraph 313(i) of the *Canadian Energy Regulator Act*, that:
  - i) the Constitutional Question is answered in the affirmative;
  - ii) sections 4(1), 7(1), 7(2), 7(3), 7(11), 7(12), 8(1)(e), 8(1)(g), 9(1)(a), 16(1), 22(1), and 24 of the Building Bylaw are inoperative, invalid, and/or inapplicable with respect to the Terminal Work;
  - iii) sections 4(1)(a), 4(1)(b), 4(2)(a), 6(4)(a), 7(3), 7(4), and 8(1) of the Plumbing Bylaw are inoperative, invalid, and/or inapplicable with respect to the Terminal Work;

- iv) sections 9(a), 9(b), 9(d), 14, 15, 16, 19, and 20(a) of the Electrical Bylaw are inoperative, invalid, and/or inapplicable with respect to the Terminal Work; and
- v) Trans Mountain may proceed with the Terminal Work pursuant to the terms and conditions of the Certificate and Associated Orders, notwithstanding the fact that the City has not issued the Permits, conducted inspections, or taken any other actions specified under the relevant section of the bylaws noted above.

**B. The Commission's decision**

The Commission has decided to grant the relief requested by Trans Mountain. Order MO-010-2022 is attached reflecting the Commission's decision.

The Commission's reasons for its decision will follow in due course.

Sincerely,

*Signed by*

Ramona Sladic  
Secretary of the Commission

Attachment

c.c. Karl Perrin, Burnaby Residents Opposing Kinder Morgan Expansion,  
Email [perrink@shaw.ca](mailto:perrink@shaw.ca)