



File OF-Tolls-Group1-T260-2023-03 01
 1 August 2023

To: List of Participants:

Trans Mountain Pipeline ULC
Application for Interim Commencement Date Tolls and Other Matters related to the Transportation of Petroleum on the Expanded Trans Mountain Pipeline System
Process Letter No. 2 - Decisions on Process and Participation

Trans Mountain Pipeline ULC (**Trans Mountain**) applied on 1 June 2023 for approval of interim commencement date tolls and other matters associated with the transportation of petroleum on the expanded Trans Mountain pipeline system ([C24695](#)) (**Application**).

On 8 June 2023, the Commission of the Canada Energy Regulator issued a letter asking any interested party that wished to participate in additional process steps established to consider the Application to register as an intervenor. The letter also sought comments on the issues raised in the Application and the process steps interested parties want the Commission to hold ([C24789](#)).

Between 8 June 2023 and 23 June 2023, 18 interested parties requested intervenor status and provided comments on issues and process. Trans Mountain filed reply comments on 23 June 2023.

The Commission has considered all comments received. This letter provides the Commission's decisions on process and participation (**Appendix 1**). Further information regarding the filing of documents also follows.

A. Decision on process

The Commission is of the view that the Application requires a more robust hearing process than requested by Trans Mountain. While the CER Act permits interim tolls and eventual reconciliation of interim tolls following approval of final tolls, the Commission must ensure that tolls are just and reasonable at all times. This Application for interim tolls is distinct from prior, and generally less complex, interim tolls applications before the Commission and National Energy Board, given:

- the magnitude of the cost increases for the Trans Mountain Expansion Project and the potential implications of those costs on tolls¹;

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¹ The Application outlines that costs and the Base Fixed Toll component have increased as follows:

<i>Cost Estimate</i>	Capped Costs (\$ Million)	Uncapped Costs (\$ Million)	Total Costs (\$ Million)	Fixed Toll (\$/bbl)
2013 Initial Estimate	4,246	1,124	5,370	4.33
2017 Certificate of Public Convenience and Necessity Estimate	5,651	1,767	7,418	5.76
2023 Application Estimate	21,820	9,087	30,907	10.88

- the degree to which interested parties expressed concern and advocated for additional process in connection with the Application;
- the anticipated duration of the interim tolls because Trans Mountain's application for final tolls is not expected until over a year after the commencement date of the expanded Trans Mountain system pursuant to the toll methodology approved in RH-001-2012; and
- Trans Mountain's request to have certain matters dealt with conclusively as part of its Application for interim tolls.

The Commission also acknowledges the need for direction on tolls within a timeframe that aligns with the expected commencement date of the expanded Trans Mountain system. To balance the need for efficiency and fair process, the Commission intends to deal with the Application in two steps.

The Commission anticipates issuing a preliminary decision on interim tolls in Fall 2023 (**Preliminary Decision**). The Preliminary Decision will not address all the issues that the Commission and interested parties, in their June 2023 comments, have identified with the Application. Rather, the Preliminary Decision will focus on a narrower set of issues that can support an initial ruling with respect to just and reasonable interim tolls, on a timeline that is intended to avoid delaying the commencement date of the expanded Trans Mountain system. The Commission has determined that a single round of Information Requests (**IR**) from the Commission is needed before making the Preliminary Decision. **Appendix 2** outlines the timelines for the following steps:

- IR from the Commission to Trans Mountain and Vancouver Fraser Port Authority (**VFPA**);
- Written comments from intervenors in relation to Trans Mountain's and VFPA's IR responses; and
- Written reply from Trans Mountain to comments filed, if any.

In addition, the Commission will establish a hearing process to consider broader issues that arise from the Application, following which the Commission expects to issue a decision that may update interim tolls (**Final Interim Tolls Decision**). Details regarding the hearing process will be determined and communicated at a later date.

B. Decision on participation

For the purposes of the process on the Preliminary Decision, the Commission has decided to grant standing to all those that registered to participate as intervenors with the exception of Kelly Lake First Nation Society (**KLFNS**) and Pro Information Pro Environment Network (**PIPEUP**).

The Commission's 8 June 2023 letter ([C24789](#)) required interested parties wanting to participate in additional process steps to register as an intervenor. The letter explained as follows:

Interested parties' participation should correspond with the degree to which they may be impacted by the Application. Accordingly, the Commission requires interested parties to explain in their registration form how their interests may be impacted by the Application, or to describe the information they will provide the Commission and explain why intervenor status is required.

The Commission will consider the information provided by each interested party in deciding whether they are assigned intervenor status.

The registration form that interested parties were required to file includes the following instructions:

Explain how your interests may be impacted by the project or application. If your interests are not impacted, explain what sort of information you will provide the Commission and why you require Intervenor status.

You must justify your participation as an Intervenor.

The registration form also links to guidance on the [CER webpage](#), which further explains the two ways of being confirmed as an intervenor: (1) where an interested party has demonstrated that their interests may be impacted by the Application; or (2) where an interested party has demonstrated that they will provide relevant information and cannot provide it by only filing a letter of comment.

The Commission finds that KLFNS has not, in their registration form, justified their participation as an intervenor. While KLFNS has established that their interests may be impacted by the physical Trans Mountain pipeline (since the project is located within their traditional territory), KLFNS does not identify how their interests may be impacted by a decision on Trans Mountain's interim tolls. KLFNS also did not demonstrate that it will provide relevant information or that it requires additional process to do so. Accordingly, the Commission has not confirmed KLFNS as an intervenor.

The Commission also finds that PIPEUP has not, in its registration form, justified its participation as an intervenor. PIPEUP indicates that it is a "community based BC Registered non-profit society" and that it "brings the perspective of... Canadian taxpayers [and] directly affected residents". PIPEUP does not, however, identify if or how it officially represents these interests or explain how they may be impacted by a decision on Trans Mountain's interim tolls. PIPEUP also did not demonstrate that it will provide relevant information or that it requires additional process to do so. Accordingly, the Commission has not confirmed PIPEUP as an intervenor.

The Commission will nevertheless consider the comments provided by KLFNS and PIPEUP filed in response to its 8 June 2023 letter. In addition, KLFNS and PIPEUP may register to participate in the hearing process for the Final Interim Tolls Decision or other processes established with respect to Trans Mountain tolls. The Commission's decision to deny participation as an intervenor to KLFNS and PIPEUP in the process leading to the Preliminary Decision is without prejudice to future registrations to participate, which the Commission will consider based on the information filed at that time.

The Commission notes that Trans Mountain, in its reply comments, asserted that Tsleil-Waututh Nation (**TWN**) should not be granted participant status because they have not demonstrated a potential to be impacted by the Commission's interim toll decision. TWN suggests that the level of the toll that Trans Mountain charges can affect Trans Mountain's ability to meet its obligations, including with respect to safe operation of the pipeline, financial responsibility and abandonment. The Commission notes that, regardless of the toll charged, Trans Mountain must meet the requirements set out by the CER Act and its associated regulations as well as applicable certificates and orders. Trans Mountain also remains subject to the CER's oversight of pipeline operations and its oversight with respect to financial resource requirements and abandonment funding. The Commission is therefore not persuaded that TWN has established potential impact of an interim toll decision to the same degree as other registrants accepted as intervenors. However, the Commission is of the view

that TWN has demonstrated that it intends to provide relevant information in future hearing steps and confirms TWN as an intervenor.

Submitting documents

Intervenors are requested to file documents using the CER Participation Portal. To do this:

- Prepare your documents in PDF format
- Sign into your [Participation Portal](#) using Sign-in Partner or GC Key
- Once signed in, click the button for “Submit Filings” under your Registration to Participate
- You will be guided through a few simple steps to title and upload PDFs
- You will have the option to select other people as filer contacts as well as serve notification of the filings through the Portal
- All your filings will be automatically sent to your REGDOCS intervenor folder and a notice sent to other parties that your document was submitted

All Intervenors are required to use the Participation Portal instead of efilings as the Portal is able to retain Intervenors’ activity history, automatically adds data tags and organizes documents within REGDOCS.

Trans Mountain’s submissions must be efiled with the CER and served on the parties in this hearing. Filings must reference **File OF-Tolls-Group 1-T260-2023-03 01**.

Yours sincerely,

K. McAllister

for
Ramona Sladic
Secretary of the Commission

Attachments Appendix 1 – List of participants
 Appendix 2 – Timetable of Events

Appendix 1 – List of Participants

Intervenors:

Alberta Department of Energy
BP Products North America Inc.
Canadian Association of Petroleum Producers
Canadian Natural Resources Limited
Cenovus Energy Inc.
ConocoPhillips Canada
Imperial Oil Limited
MEG Energy Corp
Marathon Petroleum Energy
Parkland Refining (BC) Ltd
PETROChina Canada Ltd.
Suncor Energy Inc.
TotalEnergies EP Canada
Tsleil-Waututh Nation
Vancouver Fraser Port Authority
Western Canada Marine Response Corp.

Commenters:

Kelly Lake First Nation Society
Pro-Environment United People Network

Appendix 2

Timetable of Events

Events	Responsible Participant(s)	Deadline (noon, Calgary time unless otherwise indicated)
IR No. 1 to Trans Mountain and VFPA	Commission	1 August 2023
Responses to Commission IR No.1	Trans Mountain and VFPA	16 August 2023
Written comments in relation to IR No.1 responses	Intervenors	30 August 2023
Written reply	Trans Mountain	7 September 2023