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**

**RH-002-2023 – Process Letter No. 3**

**List of Issues and Timetable of Events for Final Interim Tolls**

**Before: M. Watton, Presiding Commissioner; K. Penney, Commissioner; S. Luciuk, Commissioner**

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 (Application).

On 8 June 2023, the Commission of the Canada Energy Regulator (CER) 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).

On 1 August 2023, the Commission issued Process Letter No. 2 indicating that the Commission intends to deal with the Application in two steps (C25730-1):

1. **Preliminary Decision**: The Commission indicated it will issue a preliminary decision on interim tolls in Fall 2023 to avoid delays to the Commencement Date of the expanded Trans Mountain pipeline system (Expanded System). The additional process the Commission established to make the Preliminary Decision is now complete - namely, a single round of Information Requests (IR) from the Commission, comments from intervenors and reply from Trans Mountain.

2. **Final Interim Tolls (FIT) Decision**: The Commission indicated it will establish a hearing process (Hearing), following which the Commission expects to issue a decision that may update the interim tolls set in the Preliminary Decision. The Commission stated that it would determine and communicate details regarding this hearing process later.

Process Letter No. 2 also provided the Commission’s decision on participation in the Preliminary Decision hearing process.
The Commission will issue the Preliminary Decision in due course. This letter relates to the FIT process. In this letter, the Commission:

- provides another opportunity for interested parties to register to participate as intervenors;
- confirms the issues it will consider in the FIT Decision; and,
- sets out the process the Commission will follow for the Hearing.

The Commission’s usual approach is that interim toll decisions do not represent a ruling as to the merits of any application that may come before it regarding the setting of final tolls. The Commission's approach to this Application is different, given the Application is distinct from prior, and generally less complex, interim tolls applications (as further explained in Process Letter No. 2¹). Although the Hearing relates to interim tolls for the Expanded System, the Commission intends to consider and issue final determinations regarding as many of the outstanding Expanded System tolls issues as possible. For clarity, the Commission expects that final tolls will be determined in accordance with its directions in the FIT Decision (e.g. subject to true-up for actual costs).

A. Participation

Interested parties that registered, and were confirmed, as intervenors in the Preliminary Decision hearing process remain as intervenors in the FIT Hearing. These intervenors do not need to re-register using the Participation Portal unless there is a change to their contact information. If an intervenor would like to change their level of participation from intervenor to commenter, they should notify the Commission by filing a letter.

Other interested parties that wish to participate as an intervenor² in the FIT Hearing, including those not confirmed as intervenors for the Preliminary Decision process, must register to participate at www.cer-rec.gc.ca/participate on or before 19 October 2023. The registration form can be accessed by clicking on the link to the Application and then on the “Register as an Intervenor” box in the intervenor section.

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 granted intervenor status. If an interested party is not confirmed as an intervenor, that party can still file a letter of comment for the Commission’s consideration, in accordance with the schedule set out in Appendix 2.

B. List of Issues and Timetable of Events

Appendix 1 contains the List of Issues. Appendix 2 contains the timetable of events. Further information regarding final argument will be provided in a later process letter.

¹ C25730-1, PDF 1-2 of 6.
² Intervenors can participate in the process steps set out in Appendix 2. See the CER webpage “How to Participate as an Intervenor” for more information.
C. Scope of cost review

The Commission has determined that a targeted review of costs is necessary to make determinations in respect of the matters identified in the List of Issues.

Trans Mountain noted that there are many thousands of individual cost items associated with construction of the Trans Mountain Expansion Project (TMEP). Trans Mountain indicated that if the Hearing scope includes review of the reasonableness of these individual costs, Trans Mountain could need months to respond to IRs, and intervenors and the Commission several more months to review the responses.

Having considered Trans Mountain’s submission in this regard, as well as the submissions from other parties on their interests in costs at this time, the Commission has determined that it will not conduct a detailed review of individual TMEP cost items (e.g. invoices) as part of this Hearing. Rather, the scope of the Commission’s cost review in the Hearing will be at the level of detailed cost information sorted into groupings for costs with similar attributes (Cost Categories). Accordingly, as further described in section D, below, Trans Mountain is directed to submit cost information using Cost Categories that provide a meaningful level of detail to track costs and calculate variances related to the TMEP. Further, with no party having suggested that a detailed review of Capped Costs be undertaken at this time, the Commission’s review of Trans Mountain’s cost information will be focused on Uncapped Costs, as defined in the Facility Support Agreement. This scope of review will enable the Commission to sufficiently assess TMEP costs to make determinations related to the List of Issues.

Intervenors will be able to ask IRs of Trans Mountain regarding applicable Cost Categories and the costs that make up each category. Where relevant to the List of Issues, IRs may touch on Capped Costs. The Commission expects intervenors to focus on costs that are material to the Application.

As noted above, the Commission expects that final tolls will be determined in accordance with its directions in the FIT Decision. At the time of Trans Mountain’s application for final tolls, as-built costs will be known and shippers may have exercised their right to an audit pursuant to paragraph 6.1(c) of the Facility Support Agreement. If a party is of the view that actual cost information discloses materially different costs for particular Cost Categories than the estimates considered in the FIT Hearing, or that Commission consideration of individual cost items is warranted, a party may ask the Commission to consider these matters at the final toll stage.

D. Direction for Additional Written Evidence

The Commission directs Trans Mountain to file additional written evidence, including but not limited to the following:

- A list and description of Cost Categories which reflect the categories that Trans Mountain has used for its TMEP estimates and for recording actual costs. If the Cost Categories for estimated and actual costs are different, Trans Mountain is to clarify and provide both lists.

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3 If the categories that Trans Mountain has used for its internal tracking of TMEP estimated and actual costs will not provide sufficiently detailed information to align with the scope the Commission has described herein, then Trans Mountain should establish new Cost Categories that will do so. In this case, Trans Mountain should also provide a high-level explanation of how the new Cost Categories differ from the categories that Trans Mountain has used for its internal tracking.
The Commission notes that the Cost Categories do not necessarily need to be at the account level but need to be sufficiently disaggregated for parties and the Commission to identify potential areas of concern, including material cost components and cost increases, and to be able to ask meaningful IRs.

- A list of geographic project areas within the two project segments for which pipeline construction and inspection costs and expenses are included in Uncapped Costs. Trans Mountain should seek to set the areas at a sufficiently granular level to provide detailed information on material spend areas.4
  - For each geographic project area, Trans Mountain should describe the work completed and planned, including at a minimum: number, types, and size of crossings; length in kilometres; and number and types of above-ground facilities.

- A schedule by Cost Category, showing a breakdown of the TMEP cost estimate (Uncapped Costs only) by year and geographic project area, starting with the 2017 Certificate of Public Convenience and Necessity estimate and ending with the most recent 2023 cost estimate.
  - For each year, Trans Mountain should provide a quantitative variance analysis which shows the change in estimate from the prior year and explanations for the material year-over-year change in estimate, including quantifying the material components of the change.
  - Explanations should include details such as the reason for any material cost variances, including whether the variance was a one-time event or ongoing, what Trans Mountain did to mitigate cost increases and any alternative cost options that may have been considered at the time.
  - Trans Mountain should explain how it determined materiality for the purposes of providing the variance explanations above (for example, based on an absolute dollar value or a percentage of the estimate), and how this materiality results in appropriately detailed information for parties and the Commission.

- A schedule by Cost Category, showing a breakdown of the actual TMEP costs incurred (Uncapped Costs only), by year and geographic project area, up to and including, at minimum, the costs included in Trans Mountain’s most recent financial statements.
  - For each year, Trans Mountain should provide quantitative and qualitative details of major cost drivers, including information on cost drivers that result in actual costs varying materially from estimates.

- Confirmation of whether Trans Mountain allocated indirect costs to Capped and Uncapped costs. If cost allocations were used, Trans Mountain should identify the types of costs that were allocated and include any relevant procedures and methods for allocating costs, and Trans Mountain should provide schedules detailing the amounts and types of allocations.

- Any other detailed information about Uncapped Costs relevant to the List of Issues not otherwise outlined above.

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4 That is, geographic project areas should be at a smaller, more granular, scale than the two segments identified in Schedule B of the Facility Support Agreement ("Coquihalla Summit Wahleach (74km)” and "Fort Langley Westridge (34km)").
The Commission encourages Trans Mountain to be forthcoming in providing the level of detail that parties and the Commission will require to appropriately assess TMEP costs. The Commission also encourages Trans Mountain to consult with intervenors ahead of filing additional written evidence to help clarify the nature of information, including Cost Categories, and level of detail that will assist their review.

The Commission is providing Trans Mountain extra time to prepare its additional written evidence, in recognition of the importance and volume of the information that Trans Mountain must file. Receiving adequate cost information in additional written evidence will make the hearing process more effective and make the IR process more efficient for all parties.

Given the limitations of REGDOCS to accept machine-readable formats such as Excel, Trans Mountain is directed to provide to the Secretary of the Commission (secretary@cer-rec.gc.ca) and to intervenors, in a machine-readable format, via email, any sizable data sets (e.g., the schedules described above) it includes in its additional written evidence.

E. Information regarding process steps

Evidence to be filed

All evidence to be filed must relate to an issue identified in the List of Issues. The Applicant and all intervenors in the process may submit IRs.

Motions to compel full and adequate responses to IRs

If a party is not satisfied with a response to its IR, the party may file a motion to compel full and adequate responses in accordance with the established deadlines. Parties are directed to use the table found in Appendix 3 if filing or responding to such a motion.

Other motions

Motions must be made at the earliest opportunity and in accordance with section 35 of the National Energy Board Rules of Practice and Procedure, 1995 (Rules) with the following variations. Responding parties will have three business days to file submissions and the moving party will then have three business days to respond. The foregoing applies to motions made during the process with the exception of motions to compel, which are addressed in Appendix 2, and motions seeking a review under section 69 of the Canadian Energy Regulator Act.

Oral cross examination

The Commission intends to provide the Applicant and intervenors the opportunity to test the evidence provided by the other parties through cross-examination. If necessary, there may be redirect after the end of cross-examination, which is strictly restricted to matters arising out of cross-examination and clarification questions.

The Commission requests that parties plan to be available for oral cross-examination beginning on 24 September 2024.

Appendix 2 contains the timetable of events. These dates are subject to potential adjustments by the Commission as the process continues.
**Final Argument**

The Applicant will be required to provide both written final argument and oral final and reply argument. Intervenors who wish to provide oral argument will be required to also file written argument in accordance with the deadline to be established. While intervenors may choose to file written argument only, they are encouraged to also provide oral argument.

Further information regarding cross-examination and argument will be provided in a later process letter.

**Affidavits in support of evidence**

Written evidence filed with the Commission must be supported by an affidavit of the person who prepared the evidence or under whose direction or control it was prepared attesting that the evidence is accurate to the best of that person’s knowledge and belief, pursuant to subsection 37(4) of the Rules. Each party’s affidavit(s) must be filed by the deadline established for written argument. Further information regarding this requirement, including template affidavits, will be provided in a later process letter.

**Submitting documents**

Intervenors are required to file documents using the CER Participation Portal. To do this:
- Prepare your documents in PDF format
- Sign into your Participation Portal Account 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 to 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

Commenters do not have to sign in to file their letter of comment but can simply enter the Portal and fill in an online form, with the option of attaching a PDF. Commenters can also use the Portal to request to be notified when the commenting period is open.

All intervenors and commenters are required to use the Participation Portal.

Applicant submissions must be efiled with the CER and served on the parties in this hearing. Filings must reference File OF-Tolls-Group1-T260-2023-03 01.

**Service of procedural letter**

The Commission directs the Applicant to serve this letter, no later than two days from the date of its issuance, on the Preliminary Decision List of Participants.

Yours sincerely,

Signed by

Ramona Sladic
Secretary of the Commission

Attachments

- Appendix 1 – List of Issues
- Appendix 2 – Timetable of events
- Appendix 3 – Motion template
Appendix 1

List of Issues

The Commission will consider the following issues in the proceeding, which relate to the specific proposals in Trans Mountain’s application and may relate to any alternative proposal(s):

1. Whether the tolls proposed by Trans Mountain are consistent with the tolling methodology outlined in the RH-001-2012 Decision, the Facility Support Agreement, and the Transportation Service Agreement (RH-001-2012 Tolling Methodology), including based upon a targeted examination of TMEP costs to consider:
   a. Whether the allocation of costs and expenses to Capped Costs and Uncapped Costs is appropriate; and
   b. Whether significant costs and expenses allocated to Uncapped Costs were reasonably and necessarily incurred, as stipulated in the Facility Support Agreement.

2. Whether the tolls determined to align with the RH-001-2012 Tolling Methodology are expected to be just and reasonable, and not unjustly discriminatory.

3. Whether alternatives or modifications to the RH-001-2012 Tolling Methodology are warranted, including based upon consideration of:
   a. The potential implications for Trans Mountain’s financial position related to the level of Trans Mountain’s tolls; and
   b. The potential market impacts related to the level of Trans Mountain’s tolls.

4. Whether the components of the Application which were not explicitly approved in the RH-001-2012 Decision are just and reasonable, and not unjustly discriminatory, including:
   a. Edmonton to Edmonton tolls;
   b. Enhanced Response Regime Cost Recovery Fee;
   c. Bulk Oil Cargo Fees and Capital Asset & Loan Fees;
   d. Pipeline Reclamation Surcharge within the variable toll component;
   e. Indigenous accommodation costs as a variable toll component;
   f. Trans Mountain’s collection of the Gateway Infrastructure Fee 2;
   g. Westridge Dock Bid Premium;
   h. Non-performance penalty;
   i. Trans Mountain’s proposed true-up mechanisms for certain variable toll elements; and
   j. Treatment of revenues from the Demurrage Charge.

5 For clarity, as further described in Process Letter No. 3, the Commission expects that final tolls will be calculated in accordance with its determinations on these issues in this hearing.

6 Items a) through i) reference the list of toll components in Trans Mountain’s Reply to Comments from Interested Parties dated 30 June 2023 (C25338-1, PDF 9-10 of 14). Item j) has been added to the list as some Intervenors have raised concerns with Trans Mountain’s proposed treatment of revenues from the Demurrage Charge and the treatment was not explicitly dealt with in RH-001-2012.
5. Whether the following components should be established on a final, rather than interim, basis at this time:
   a. Demurrage Charge:
      i. Toll level; and
      ii. Treatment of Revenues;
   b. Petroleum Loss Allowance Percentages;
   c. Westridge Dock Bid Premium;
   d. Enhanced Response Regime Cost Recovery Fee:
      i. Inclusion in variable toll; and
      ii. Collection period;
   e. Bulk Oil Cargo Fee(s);
   f. Capital Asset & Loan Fee(s);
   g. Indigenous Consultation and Accommodation Costs as a variable toll component;
   h. Gateway Infrastructure Fee 2; and
   i. Single Settlement Approach:
      i. Methodology; and
      ii. Interest rate.

6. The appropriate manner to refund or recover any difference between interim tolls and final tolls, including consideration of Trans Mountain's requested single settlement approach. Consideration will also be given to whether, and if so how, to refund or recover any difference between the preliminary interim tolls charged and the final interim tolls.

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7 Items a) through j) reflect the toll components for which Trans Mountain is requesting approval on a final basis, as presented in its 16 August 2023 response to IR No. 1.5a (C25905-2, PDF 26 of 47).
Appendix 2

Timetable of events

All submissions are due by 4:00 PM, Calgary time, on the date specified.

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Appendix 3

Motion template

Applicant’s Application to #############

CHART FOR FULL AND ADEQUATE RESPONSES TO INFORMATION REQUESTS

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Instructions:

1. Column 1: Insert the number and text of the information request (the references and the preamble can be omitted).

2. Column 2: Insert the text of the given response to the information request.