

May 17, 2024

Calgary

Via Electronic Filing

Toronto

Canada Energy Regulator
Suite 210, 517 Tenth Avenue SW
Calgary, AB T2R 0A8

Montréal

Ottawa

Attention: Ramona Sladic, Secretary of the Commission

Vancouver

Dear Ms. Sladic:

New York

**Re: Complaint by Canadian Natural Resources Limited against Trans Mountain Pipeline ULC arising from the Expanded System Rules and Regulations Governing the Transportation of Petroleum on the Expanded Trans Mountain Pipeline System CER File No. 3432949
Reply Comments of Trans Mountain Pipeline ULC (“Trans Mountain”)**

We are counsel to Trans Mountain in respect of this matter. Trans Mountain has reviewed the complaint (“Complaint”) filed by Canadian Natural Resources Limited (“CNRL”) concerning Total Acid Number (“TAN”) and vapour pressure specifications on the Expanded Trans Mountain Pipeline System (“Expanded System”)¹ and comments filed by interested parties in accordance with the Commission’s Process Letter No 1.² Pursuant to Process Letter No. 1,³ Trans Mountain provides the following clarifications and comments.

Trans Mountain’s Interest in the Complaint

The TAN and vapour pressure limits subject to the Complaint are established under Trans Mountain’s Petroleum Tariff Rules and Regulations No. 116 (“Tariff 116”)⁴ and Service Standards Issue No. 9,⁵ both issued on April 3, 2024. These documents establish a maximum TAN of 1.3 Mg KOH/g for petroleum in the Low TAN Dilbit pool and a maximum vapour pressure of 103kPa for all petroleum types (the “Technical Specifications”). CNRL has requested in the Complaint that

¹ Filing ID: [C29207](#) [Complaint].

² Filing ID: [C29468](#) (The Explorers and Producers Association of Canada, 30 April 2024); [C29580](#) (Javelin Global Commodities (CAN) Ltd.); [C29581](#) (MEG Energy Corp.); [C29590](#) (ConocoPhillips Canada Crude Oil - NGL Marketing); [C29594](#) (Chevron U.S.A. Inc.); [C29595](#) (The Explorers and Producers Association of Canada, 10 May 2024); [C29598](#) (Suncor Energy Marketing Inc.); [C29599](#) (Valero Marketing and Supply Company); [C29600](#) (WSPA); [C29601](#) (Imperial Oil Limited); [C29603](#) (Cenovus Energy Inc.); [C29604](#) (Plains Midstream Canada ULC).

³ Filing ID: [C29496](#).

⁴ Filing ID: [C29126-2](#) [Tariff 116].

⁵ Filing ID: [C29127-2](#) [Service Standards].



the Commission amend the Technical Specifications to (i) reduce the TAN limit to 1.1 Mg KOH/g for the Low Tan Dilbit pool and (ii) set separate vapour pressure specifications for individual commodity pools.

Prior to submitting the Complaint, in December 2023, CNRL raised its concerns regarding the Technical Specifications and pool names with Trans Mountain and other Trans Mountain shippers. Most Trans Mountain shippers supported CNRL's position; however, others were opposed to it. Trans Mountain committed to working with CNRL and all other Trans Mountain shippers to review the Technical Specifications and consider whether amendments are warranted. That review process is still underway. One of Trans Mountain's considerations in the review was to commence operation of the Expanded System and evaluate initial demand for various pool types before proposing any changes to the Technical Specifications or pool names.

In Trans Mountain's view, the ongoing review process is the appropriate process for addressing potential changes to Trans Mountain's tariffs. Unless a shipper believes that a Trans Mountain tariff contravenes the *Canadian Energy Regulator Act* ("CER Act") or a Commission order (which CNRL has not alleged in the Complaint), any request to modify the tariff should be addressed directly between Trans Mountain and its shippers outside of the regulatory process. Trans Mountain respectfully submits that the Commission should only become engaged in the issue if and when (i) Trans Mountain files a request to amend its tariff, or (ii) Trans Mountain concludes its engagement process with shippers and decides not to amend its tariff. By filing the Complaint before Trans Mountain's shipper engagement process has concluded, CNRL is circumventing the proper process and unnecessarily engaging the CER's resources.

Trans Mountain wishes to be clear that it only takes issue with CNRL's raised concerns from a procedural perspective and not from a Technical Specifications perspective.

Clarifications

Trans Mountain makes the following clarifications solely to assist the Commission in understanding the factual background to the Complaint:

- Trans Mountain has pooled light crude grades since 2017 on the legacy Trans Mountain Pipeline System.
- Vapour pressure specifications for the Expanded System were developed through extensive consultation with shippers, as described in Trans Mountain's January 27, 2023 application for approval of revisions to the Rules and Regulations for the Expanded System.⁶ Heavy Pooling was the focus of consultation with the Expanded System shippers.
- Pool names have remained relatively unchanged since 2015, with no suggestion from any shipper that these may be inappropriate until December 2023. Trans Mountain understood

⁶ Filing ID: [C23061-2](#).



at the time of its January 27, 2023 application that the vapour pressure specifications and pool names aligned with shippers' expectations.

- Pools and the crude commodities participating in each pool were discussed extensively with the Firm Shipper group beginning in 2015. TAN was one of the criteria initially suggested to segregate heavy commodities.
- The Complaint suggests that the vapour pressure limit set by Tariff 116 is 103 kPa at 37.8°C for all petroleum types and that this vapour pressure is unchanged from the vapour pressure limit set within Tariff 114 for the legacy Trans Mountain Pipeline System.⁷ Trans Mountain wishes to clarify that while the maximum permitted test result of 103 kPa is unchanged between the two tariffs, Tariff 114 required the use of test method D323 (Reid Vapour Pressure, or "RVP") for both Crude Petroleum and Refined Petroleum while Rule 23.1 of Tariff 116 adopts two different test methods: the ASTM D5191 test method applies to Refined Petroleum, while the ASTM D6377 test method (completed at 37.8°C and a vapour/liquid ratio of 4:1, or "VPCR₄") applies to Crude Petroleum. The ASTM D5191 method provides results comparable to those obtained under the RVP test used in previous Trans Mountain tariffs. However, the VPCR₄ method, now applied to Crude Petroleum in Tariff 116, results in a lower effective vapour pressure limit than under previous tariffs. The specification in Tariff No. 116 of 103 kPa VPCR₄ would have a RVP Equivalent ("RVPE") of 86 kPa.⁸
- The U.S. Environmental Protection Agency ("EPA") requirements for tank emissions apply to the Trans Mountain Pipeline (Puget Sound) LLC system operating in Washington State. Based on the calculation provided in US EPA AP42 Chapter 7, an estimated True Vapour Pressure (or "TVPE") at the tank operating temperature can be estimated based on a RVP test. Trans Mountain is meeting the emissions requirement of TVPE < 11psi at the highest observed tank temperatures. It is Trans Mountain's understanding that this is the same specification applying to most West Coast refiners, although operating conditions and tank temperatures may vary from those observed in Trans Mountain's Washington State tanks.⁹

⁷ Complaint at para 3(a).

⁸ ASTM D6377 provides a correlation factor between VPCR₄ and RVP, known as the Reid Vapor Pressure Equivalent (or "RVPE"). For samples collected in a piston cylinder, RVPE can be calculated from an VPCR₄ result by multiplying by a factor of 0.834. For example, if a Crude Petroleum sample were tested by VPCR₄ method and resulted in 120 kPa it would exceed the maximum permitted value of 103 kPa in Tariff 116, but the RVPE would be 100 kPa and the Crude Petroleum would likely be acceptable under Tariff 114 (RVPE is an estimate; actual results of the RVP method may be vary).

⁹ See United States Environmental Protection Agency, *AP-42: Compilation of Air Emissions Factors from Stationary Sources*, Chapter 7: Liquid Storage Tanks (June 2020), online (PDF): <https://www3.epa.gov/ttnchie1/ap42/ch07/final/ch07s01.pdf>.



- The Complaint and submissions from Chevron U.S.A. Inc., Western States Petroleum Association, and Valero Marketing and Supply Company indicate that West Coast refiners are unable to accept crudes with a vapour pressure as high as 103 kPa. Trans Mountain understands that the vapour test method and conditions in Tariff 116 are the same as for Washington State; however, operating conditions/temperature may vary. As test temperatures are different, the results cannot be directly compared to the vapour pressure specification stated in Tariff 116.
- A commonly used charterparty at Westridge Marine Terminal is the ASBATANKVOY, which typically contains the requirement that tested crude loaded onto a vessel must have a vapour pressure less than 93 kPa utilizing the RVP method.¹⁰ As described above, Trans Mountain expects that all crude meeting the requirement of Tariff 116 will meet this requirement. Again, the maximum permitted Crude Petroleum RVPE under Tariff 116 is 86 kPa.
- The Technical Specifications comply with all requirements of the *CER Act* and Commission orders with respect to safety and environmental protection.

Issues to be Considered

The Complaint does not allege that the Technical Specifications violate any provision of the *CER Act* or a Commission order, nor does the Complaint materially address the Commission's jurisdiction to grant the requested relief in the absence of such a finding. As noted by Cenovus Energy Inc. and Plains Midstream Canada ULC, the Commission's jurisdiction under section 233 of the *CER Act* requires that a complainant establish an arguable case that the tariff is contrary to the *CER Act* or a Commission order.

In Trans Mountain's view, the *CER Act* does not contemplate that shippers can propose modifications to approved pipeline tariffs that comply with all legal requirements through bringing a "complaint" to the CER. While the Commission has broad jurisdiction to make orders with respect to tariffs under section 226 of the *CER Act*,¹¹ Trans Mountain submits that section 226 was not intended, and has never previously been applied, as a means for shippers to seek tariff amendments outside the more specific complaint procedures of section 233.

The longstanding practice on CER-regulated pipelines is that tariffs are established by the pipeline company within the legal requirements of the legislation and CER authorizations, and specifications are determined by market conditions and agreements with shippers. Trans Mountain is concerned that, should the Commission allow this Complaint to proceed, such a proceeding

¹⁰ A copy of this document is available online at: https://www.canada.ca/content/dam/eccc/migration/main/lcpe-cepa/61b26ee8-afb3-47ac-91ac-12afbb0b549b/ccme_eng.pdf. See esp. clause 13(a).

¹¹ CER Reasons for Decision RH-001-2022: CNOOC Marketing Canada Application in respect of PKM Canada North 40 Limited Partnership for access to Connection Facilities at the Trans Mountain Edmonton Terminal on reasonable terms (30 January 2023), PDF p. 24 (File ID: [C22856-1](#)).



would set a precedent by which any shipper displeased with technical aspects of lawful and approved pipeline tariffs could initiate a regulatory hearing and make an end-run around established processes for negotiation and agreement between a pipeline company and its shippers.

For these reasons, when considering the Complaint, the Commission should first consider whether the public interest favours the Commission adjudicating the substantive issues in the Complaint (assuming the Commission has jurisdiction to do so) before Trans Mountain has completed engagement with its shippers on possible amendments to the Technical Specifications. If the Commission decides to consider the merits of the Complaint, the Commission should also determine whether it has jurisdiction to grant the requested relief absent an arguable case that the Technical Specifications contravene the *CER Act* or a past order of the Commission.

Trans Mountain’s Position on the Burden of Proof and Procedural Matters

Trans Mountain agrees with CNRL that in cases where shippers submit a complaint to the CER alleging that a pipeline is violating the *CER Act* or an order of the Commission, the shipper only needs to establish an “arguable case” and the burden then shifts to the pipeline to prove its compliance. However, that is not the circumstance of the Complaint. CNRL is not alleging in the Complaint that Tariff 116 violates the *CER Act* or any order of the Commission. Instead, CNRL is seeking to modify an existing, lawful pipeline tariff on the sole basis that – in CNRL’s view – such modifications are in the public interest.

When an industry participant seeks to alter a pipeline company’s tariff absent an allegation that the tariff violates the *CER Act* or an order of the Commission, the Commission has held that it is that the party seeking a change to the status quo who must establish that the requested relief should be granted.¹² Trans Mountain submits that the burden of establishing the preliminary issues identified above and the substantive issues raised in the Complaint lie with CNRL and its supporters.

With respect to the process for considering the Complaint, Trans Mountain notes that the Complaint does not identify what commodity classes and vapour pressure specifications CNRL proposes as replacements to those set out in Tariff 116. If the Commission decides to consider the merits of the Complaint, despite the ongoing commercial process Trans Mountain is administering on this issue, as a matter of fairness CNRL must be required to clearly specify its requested relief. Trans Mountain and other interested parties should then be provided with an opportunity to provide written submissions setting out their views and CNRL – as the applicant – should have a right of reply. Given the subject matter of the Complaint, Trans Mountain respectfully submits that oral

¹² See National Energy Board Reasons for Decision GH-2-87: TransCanada PipeLines Limited Applications for Facilities and Approval of Toll Methodology and Related Tariff Matters (July 1988) at PDF p. 102 ([link](#)): “Whether or not the relief sought by an applicant involves a change in the status quo, the Board is of the view that with respect to such relief the initial burden of proof always lies with the applicant. . . . This conclusion is based upon principles of fairness and not upon the provisions of section 56 of the [National Energy Board] Act.” This approach was affirmed by the Canada Energy Regulator in CER Letter Decision re. The Explorers and Producers Association of Canada Application to Extend the NOVA Gas Transmission Ltd. Gas Transportation Temporary Service Protocol Tariff Provision at PDF p. 8 (Filing ID: [C12183-1](#)).

argument and information requests are unnecessary, and the merits of the Complaint can be decided through written comments alone.

Sincerely,



Sander Duncanson

cc: Dorothy Golosinski, Vice President, Regulatory,
Trans Mountain Canada Inc.

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