



Letter of Comment

Date: 6/17/2011 12:38:05 PM

Proceeding Information

Project Name: RH-2-2011 - Trans Mountain Pipeline ULC - Firm Ser	Company Name: Trans Mountain Pipeline ULC
Hearing Order No: RH-2-2011	File Number: OF-Tolls-Group1-T260-2010-04 01

Contact Information

Name: Misty MacDuffee	Address: P.O. Box 795
Title: Chair	City: Ganges
Organization: Gulf Islands Alliance	Province: BC
Telephone: (250) 629-3001	Postal Code: V8K 2W3
Facsimile:	Email: misty@raincoast.org

Please ensure that your letter of comment includes:

- the nature of your interest in the application
- comments on the application
- any relevant information that will explain or support your comments

For further information, please refer to the Hearing Order on the NEB website at www.neb-one.gc.ca.

Comments

Attach additional pages if necessary.

The Gulf Islands Alliance is a non-profit, non-government volunteer organization dedicated to the protection of the Gulf Islands, their natural environments, rural nature and unique cultures. GIA supports the Islands Trust federation in achieving its legislated object to preserve and protect the Trust Islands. Our understanding of this application is based on analysis by Karen Campbell, staff lawyer for Ecojustice.

This application is one of a series of ongoing applications to the National Energy Board to steadily increase the capacity of the Trans Mountain pipeline and its Westridge Terminal. Two earlier applications increased capacity to the current 300,000 bpd.¹ Additional applications and expansions planned over the next five years plan for a total of 700,000 bpd being shipped from the Westridge Terminal by 2016.² These incremental applications and expansions

effectively quadruple the number of tankers travelling through the Georgia Strait and Gulf Islands. The implications of these expansions will be significant, particularly in the event of a tanker spill, collision, or other mishap. In this application, British Columbians are being asked to bear these additional risks with virtually no public engagement.

The tanker route through the Gulf Islands and Georgia Strait also overlays large sections of the legally designated critical habitat of Canada's population of southern resident killer whales. This population is listed as 'endangered' under Canada's federal Species at Risk Act (SARA). In addition to the risk a catastrophic spill presents to this population, the increased presence of tankers also presents concerns of physical and acoustic disturbance. Physical and acoustic disturbance from shipping in critical habitat are two of the four threats identified by Canada's killer whale team scientists as reasons for the continuing inability of this killer whale population to recover. The requirement that these effects be considered is stated in Canada's federal Fisheries Act and Canada's Marine Mammal Regulations. Sources and effects of threats to Orcas are scientifically chronicled in the Species at Risk Act.²

A significant oil spill in this area would impact important marine, coastal and estuarine systems throughout Georgia Strait, the Fraser estuary and the Gulf Islands. These include sensitive ecosystems, wild salmon populations, threatened and endangered marine mammal and bird populations as well as shellfish species already heavily impacted. A spill would also affect the way of life of residents and the regional economy that is dependent on coastal marine waters.

Comments on this Firm Service Application

This is a complex application, yet we are ultimately concerned that its approval will allow Trans Mountain to ship up to 143,000 bpd on an on-demand basis;³ thus increasing the number and/or size of tankers travelling through Burrard Inlet, Georgia Strait and the Gulf Islands. This application also lays the groundwork for further expansion of tanker and barge activity at the Westridge Terminal. This raises two broad areas of concern:

1. The risks posed by oil tanker and barge activities in the Georgia Strait and Gulf Islands are poorly understood by the government.

2. There is insufficient engagement of stakeholders and coastal communities in this process.

1. The risks posed by oil tanker and barge activities in the Georgia Strait and Gulf Islands are poorly understood by the government.

Kinder Morgan (Trans Mountain's parent company) estimates that in 2010, 71 tankers left the Westridge Terminal (or 142 transits), and that by 2016, 288 tankers (or 576 transits) will leave the Westridge Terminal. This means more than one tanker per day travelling Georgia Strait and the Gulf Islands.⁴

The Auditor General has already expressed concern about risks related to oil spills from ships. In 2010, a federal Auditor General report identified gaps and inadequacies in Canada's system for responding to oil spills from ships. This audit examined how the federal government has managed oil and chemical spills from ships in Canada's Arctic, Pacific and Atlantic Ocean waters, with a specific focus on Transport Canada, Environment Canada, and the Canadian Coast Guard's ability to respond to such spills. The recommendations of the audit include:

- That a risk assessment related to ship source spills be conducted by Transport Canada, Environment Canada and the Canadian Coast Guard, and that a process to review risks on an ongoing basis be established;
- That national and regional emergency management plans need to be reviewed and updated by Environment Canada and the Canadian Coast Guard;
- That the Canadian Coast Guard should evaluate its response capacity, taking into account the response capacity of the private sector against risks related to ship source spills; and
- That procedure for reporting spills should be subject to a quality assurance program so that results of spill responses are consistently documented.⁵

All of these recommendations were fully agreed to by the agencies that were subject to the audit – Transport Canada, Environment Canada and the Canadian Coast Guard. With regard to the risk assessment recommendation, Transport Canada specifically indicated that it intends to begin scoping a risk assessment in 2010, and would complete it by the end of 2011-12.⁶

The Current spill response capacity is also insufficient. In addition to the limitations identified by the Auditor General, a working group of the Pacific States – British Columbia Oil Spill Task Force (the U.S./Canadian Transboundary Spill Planning and Response Project Stakeholder Workgroup) made over 130 recommendations earlier this year to government and industry stakeholders on both sides of the border to improve current oil spill planning and response capabilities.⁷ The final report found that are ill prepared to respond to oil spills in the region that are possible, especially in light of the increase in large oil tankers transiting the waters of Burrard Inlet, Georgia Strait, Strait of Juan de Fuca and Haro Strait.⁸

Finally, the cumulative impacts of increased tanker traffic increase risks to threatened and endangered wildlife, and sensitive ecosystems. These risks are not just from spill threats and impacts. In the case of resident killer whales, this extends to impacts from increased physical and acoustic disturbance associated with increased shipping. Under Canada's endangered species legislation, additional approvals by the Minister of Fisheries and Oceans may be necessary before any increases in tanker activity could occur. Increased tanker activity could impact southern resident killer whale critical habitat, the subject of a protection order⁹ under the Species at Risk Act.¹⁰ The Act envisions that where a protection order exists, any activity that could affect the protected species' habitat must first secure the approval of the Minister of Fisheries and Oceans.

2. Coastal communities and the public are unaware of this application and its implications

While this Application has provided an opportunity for some stakeholders to become aware of this proposal, it is not readily apparent that a tariff application would result in increased tanker traffic. As such the public is not aware that tanker traffic through this region is about to increase dramatically.

- Notable increases in tanker traffic are enabled with effectively no public consultation
- Recent changes to Second Narrows transit procedures have increased the nature and size of tankers transiting the region without meaningful public engagement
- This application is inextricably linked to multiple future applications, which should be evaluated as one package, not incrementally and on a piecemeal basis.

Request to the National Energy Board

The NEB has already decided that interest in this Firm Service Application is significant enough to warrant determination by a hearing instead of written submissions. Both the National Energy Board Act, and the Board's own description of its responsibilities acknowledge the importance of the public interest¹¹ and environmental protection¹² in Board deliberations. We make the following requests of the Board in this context:

1. The impacts on the marine environment of this application should be considered by the Board, including the requirement that Trans Mountain hold community meetings and undertake broad public consultation as a condition of any approval.
2. Firm Service should not be approved until a risk assessment of oil spills from ships for the West Coast has been conducted, and acted upon, consistent with the recommendations of the federal Auditor General.
3. That any Firm Service arrangement be continuously subject to the results of updated risk assessments.