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March 13, 2013

Ms. Sheri Young
Secretary of the Board
The National Energy Board
444 – 7th Avenue SW
Calgary, AB T2P 0X8

Dear Ms. Young,

Re: Application to the National Energy Board (the "NEB") by Trans Mountain Pipeline ULC on behalf of Trans Mountain Pipeline L.P. (collectively "Trans Mountain") dated 13 March 2013 for Orders pursuant to Part IV of the *National Energy Board Act* ("*NEB Act*") approving a multi-year Incentive Toll Settlement

Trans Mountain encloses for filing one (1) copy of an application for approval of an Incentive Toll Settlement for 2013 to 2015 ("2013-2015 ITS") for determination of the multi-year annual Revenue Requirements, tolls and related toll issues for the Trans Mountain System (the "Application"). The 2013-2015 ITS is the result of a successful negotiated settlement process between Trans Mountain, Shippers and the Canadian Association of Petroleum Producers ("**CAPP**"). Attached to Trans Mountain's Application are letters of support from Shippers and CAPP.

The filing is organized into the following sections:

- Application: summarizes the nature of the settlement and the approvals Trans Mountain is seeking from the NEB. This section includes the letters of support for the 2013-2015 ITS;
- 2013-2015 ITS: the terms describe the principles of the settlement and the agreed upon methodology for calculating the Revenue Requirement;
- Schedules: demonstrate in detail the calculation methodology embodied in the 2013-2015 ITS, the 2013 proposed amounts and illustrations of proforma 2013 reconciling adjustments. Included in the schedules are preliminary estimates of the 2012 Prior Year Adjustments calculated pursuant to the terms of the 2012 Negotiated Toll Settlement. Such adjustments will be updated in the 2013 toll filing;
- Settlement Process: includes a description of the negotiations undertaken in chronological order, a copy of the notice to Shippers and Interested Parties of the meeting held on February 27, 2013, the list of attendees and the final

materials presented to Shippers and Interested Parties at this meeting along with speaker notes; and

- Appendices also include the Capacity Incentive Code of Conduct; the Inventory Settlement Procedures; the Refined Petroleum Reconciliation Procedure; and the Petroleum Tariff: Rules and Regulations.

The 2013-2015 ITS is a comprehensive settlement for the determination of tolls, taking into account known items and providing for yet to be determined items such as cost impacts related to the implementation of the Land Matters Consultation Initiative Stream 3 and other initiatives and compliance matters as directed by the NEB.

Trans Mountain is filing the 2013-2015 ITS in advance of its 2013 toll application to provide the NEB with additional time for review of the 2013-2015 ITS. Trans Mountain is working on the 2013 tolls that are calculated in accordance with the 2013-2015 ITS and anticipates that the 2013 toll application will be filed with the NEB in early April with a requested effective date of May 1, 2013.

To assist in this process, Trans Mountain requests that all letters of comment be submitted to the NEB no later than noon March 21, 2013.

By way of this letter, Trans Mountain is notifying Shippers and Interested Parties that copies of this filing may be obtained by accessing the NEB internet website (www.neb-one.gc.ca). Interested parties are encouraged to utilize this electronic medium to obtain copies of this Application. However, should any Shipper or Interested Party require a hard copy of this Application, please contact Ms. Linda Wagner at (403) 514-6472.

Sincerely,

B McClellan

Brenda McClellan
Director, Regulatory Affairs

cc: Shippers and Interested Parties
Beth Lau, CAPP
Heather Mark
Wanjing Hu
Marie Buchinski, Bennett Jones LLP

NATIONAL ENERGY BOARD

IN THE MATTER OF the *National Energy Board Act*, R.S.C. 1985, c. N-7, as amended, ("*NEB Act*"), the Regulations made thereunder and the Guidelines for Negotiated Settlements of Traffic, Tolls and Tariffs;

AND IN THE MATTER OF an Application pursuant to Part IV of the *NEB Act* by Trans Mountain Pipeline ULC as General Partner of Trans Mountain Pipeline L.P. for Approval of a multi-year Incentive Toll Settlement for 2013-2015 and the toll methodology set out therein

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APPLICATION

BY TRANS MOUNTAIN PIPELINE ULC

AS GENERAL PARTNER OF TRANS MOUNTAIN PIPELINE L.P.

FOR APPROVAL OF A MULTI-YEAR INCENTIVE TOLL SETTLEMENT

AND RELATED MATTERS

2013 – 2015

Dated March 13, 2013

TO: The Secretary
National Energy Board
444 – 7th Avenue S.W.
Calgary, Alberta T2P 0X8

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List of Attachments

I. INTRODUCTION

1. Trans Mountain Pipeline ULC is the General Partner of Trans Mountain Pipeline L.P. (collectively, "**Trans Mountain**"). Trans Mountain owns an oil pipeline system (the "**System**") originating at Edmonton, Alberta and terminating at Burnaby, British Columbia, with intermediate points of receipt and delivery. The Trans Mountain System is regulated by the National Energy Board ("**Board**" or "**NEB**").

2. Trans Mountain hereby applies to the Board for approval of a multi-year incentive toll settlement ("**2013-2015 ITS**") negotiated between Trans Mountain, the Canadian Association of Petroleum Producers ("**CAPP**") and Trans Mountain Shippers for determination of the annual Revenue Requirements, tolls and related toll issues for the System (the "**Application**"). The proposed 2013-2015 ITS is provided at Attachment 1. Letters of Support are provided as Attachment 2 and form part of this Application. To Trans Mountain's knowledge, all Shippers and interested parties either support the 2013-2015 ITS and NEB approval, or are not opposed to it.

3. Since 1996, Trans Mountain and its Shippers have entered into five different agreements which provided for the settlement of the Revenue Requirement and toll issues for the System for certain time periods. All agreements commenced on January 1 of the agreed to year and ended December 31 of the agreed to year.

4. In May 2012, Trans Mountain, CAPP and Trans Mountain Shippers commenced discussions regarding the options available for a new one year or multi-year settlement commencing January 1, 2013. Further details regarding discussions related to a proposed settlement are provided in Attachment 3. Pursuant to those discussions, Trans Mountain, CAPP and the Shippers developed the 2013-2015 ITS which shall, subject to the approval of the NEB, provide for settlement of the Revenue Requirement and toll issues applicable to the System for three (3) years commencing January 1, 2013 and ending December 31, 2015 with a roll-over provision (the "**Term**"). The roll-over provision allows for an extension to the period of the 2013-2015 ITS for up to two (2) additional years or until such time as the Trans Mountain Expansion Project is operational.

5. The incentive based methodologies of the 2013-2015 ITS are intended to align the interests of Trans Mountain with those of its Shippers through capacity and power optimization opportunities which focus on the inherent risks and rewards of transporting greater volumes while reducing costs. Trans Mountain shall strive to enhance the overall capacity of the System through operational improvements and other opportunities as outlined in Sections 11.4, 11.5 and 11.6 of the 2013-2015 ITS.

6. At a minimum, Trans Mountain will continue to provide the current level of service and response to Shipper requests as governed by its Service Standards.

7. Trans Mountain understands that the incentives negotiated within the 2013-2015 ITS provide an opportunity to achieve incremental revenues and cost savings and that they are not a guarantee of such revenues and savings. Shippers have the right to review the

incentives annually and prior to the end of the Term and have the right to discontinue such incentives in certain circumstances.

8. All capitalized terms used in this Application, which are defined in the 2013-2015 ITS, shall have the same meanings herein, except where otherwise noted.

9. The 2013-2015 ITS is to be viewed as a whole and no component of it, taken in isolation, should be construed as representing the position of any party other than as part of the overall incentive settlement. No element of the 2013-2015 ITS shall be considered acceptable to any party in isolation, nor shall it form a precedent, nor prejudice the position of any party in future proceedings.

10. The following materials are attached and form part of this Application:

Attachment 1 – 2013-2015 ITS including Schedules 1-10 and Toll Schedules 1-10, (collectively the "**Schedules**"). To comply with the Board's Decision in RH-2-2011, Schedule 10 NEB 4 files the annual report on the Firm Service Fees collections, assignment to eligible projects and calculation of AFUDC or bank interest, when applicable;

Attachment 2 – Shipper and CAPP Letters of Support;

Attachment 3 - Summary of the Settlement Process including: Notice of meeting held February 27, 2013; Attendees and Trans Mountain participants at the 2013-2015 ITS Presentation; and 2013-2015 ITS Presentation and speaker notes;

Attachment 4 – Proposed Petroleum Tariff: Rules and Regulations; and

Attachment 5 - New Procedures, including Capacity Incentive Code of Conduct, Inventory Settlement Procedure and Refined Petroleum Reconciliation Procedure.

II. SUMMARY OF THE 2013-2015 INCENTIVE TOLL SETTLEMENT FOR THE TRANS MOUNTAIN SYSTEM

11. The 2013-2015 ITS provides a detailed framework and description of the methodology for determining the Revenue Requirement on the System for the Term. The 2013-2015 ITS extends many of the provisions of the 2012 Negotiated Toll Settlement ("**2012 NTS**") with updates that address the Term of three years. Specific changes applicable to 2013, including all incentives, have been provided for in the 2013-2015 ITS.

12. As further described in the 2013-2015 ITS, the Revenue Requirement shall be the sum of:

(a) Fixed Costs, which will include Direct O&M and Salaries and Wages, inclusive of a one-time increment of $3 million to be escalated annually (the "Divestiture") to incorporate the impact of Kinder Morgan Energy Partners L.P.

and their partners' divestiture of the Express and Platte pipelines.[1] A sharing mechanism formula, included in the calculation of the Capacity Incentive Adjustment, was designed to return to Shippers a portion of the Divestiture amount annually as System capacity improvements are achieved. The formula can refund up to 100% of the annual Divestiture amount.

(b) Forecasted Flow Through Costs will include power, property taxes, Integrity Management, Land and Right of Way Management, Environmental Compliance and Remediation, Pension Costs, Petroleum Loss costs for the first four (4) months of 2013, insurance and NEB Cost Recovery; and

(c) Return on Capital will be based on a deemed capital structure of 45% equity and 55% debt; return on equity of 9.50%, and cost of debt of 5.50%. Rate base will be determined each year on a flow-through basis. The Rate Base excludes assets not utilized by all Shippers on the System such as the Westridge non-regulated facilities, pipe rack assigned costs and the Edmonton Terminal Expansion ("**ETE**") contract tanks under Order XO-T246-04-2008, as amended. All other capital additions, with the exception of capital pertaining to any New Business Opportunities, will be treated on a flow through basis.

(d) Depreciation Expense – no change in depreciation rates is proposed.

(e) Adjustments consist of changes, plus or minus, to the Revenue Requirement resulting from variances in the prior year. For 2013, Adjustments will reflect items flowing out of the 2012 NTS as set out in the Schedules. For the remainder of the Term, Adjustments to the Revenue Requirement will reflect variances in:

   (i) Flow Through Costs between forecast and actual, including any variance between the forecasted and actual cost of Petroleum Losses for the first four (4) months of 2013. Petroleum Losses for the remainder of the Term will be administered as a percentage of volumes delivered: defined in the Inventory Settlement Procedure, the Refined Petroleum Reconciliation Procedure and Trans Mountain's Proposed Tariff: Rules and Regulations.

   (ii) Return on and of capital, including variances in the return on equity, the debt rate and depreciation expense.

   (iii) Calculation of the Provision of Income Taxes between forecast and actual.

   (iv) Transportation revenues (the Transportation Revenue Adjustment), calculated as the difference between actual toll revenues collected less revenues subject to the capacity incentive sharing and the Revenue Requirement used in the toll calculations.

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[1] The sale of Express Pipeline Ltd., Express Pipeline Limited Partnership, Express Pipeline LLC and Platte Pipe Line Company was completed in March, 2013.

(v) Shipper share of incentive amounts achieved for capacity and power.

(vi) Arising from NRAs such as variances that may arise as a difference between forecasted and actual amounts of new NRAs not anticipated in the year. Such variances may occur in relation to:

a. Increases in Fixed Costs arising from changes in programs, required NEB reporting or installation of facilities as a result of changes in legislation, regulation, orders or direction by the NEB or other government authorities where the matter was not initiated by Trans Mountain or its Affiliates. This category includes, without limitation, costs related to:

1. development and implementation of the Land Matters Consultation Initiative ("**LMCI**") and ultimately the collection of pipeline abandonment costs, pursuant to NEB Order RH-2-2008;
2. development and implementation of programs pursuant to NEB directives or orders such as ratification of Bill C38 and Bill C45;
3. ETE fixed costs applicable to NEB regulated operations as these costs become known throughout the Term;
4. testing, programs or facilities requested by Shippers and agreed to by Trans Mountain. A determination shall be made as to the treatment for tolls, i.e. roll in or stand alone, with or without Shipper funding, etc.; and
5. programs necessary to address new or unanticipated failure mechanisms which may impact System integrity;

b. The costs of audits reimbursed pursuant to Section 17.5 of the Agreement (which shall not be subject to the cost limitations for an Operating NRA as set out in Section 3.1(x) of the Agreement);

c. Sharing of Edmonton Terminalling Revenues (which shall not be subject to the cost limitations for an Operating NRA as set out in Section 3.1(x) of the Agreement). Schedule 8.1 sets out the method for calculating the Edmonton Terminalling Revenues pre and post ETE start up; and

d. Receipt of Alternate Delivery Point Fees, Demurrage Charges and/or Non-Performance Penalties: in the event that such fees are collected by Trans Mountain, these fees shall be returned to Shippers (which shall not be subject to the cost limitations for an Operating NRA as set out in Section 3.1(x)).

(vii) Carrying Charges will be calculated on all Adjustments owed to Shippers as of December 31 of the applicable year at Trans Mountain’s overnight bank rate.

13. Trans Mountain continues to carry on its balance sheet an amount respecting accumulated deferred income taxes ("**ADIT**") not previously amortized to the Revenue Requirement. ADIT relates to a prior period when Trans Mountain collected income taxes on a normalized basis, rather than on today's flow-through methodology. Under the 2013-2015 ITS, one third (1/3) of the 2012 closing ADIT balance will be refunded to Shippers annually in the tolls. The Rate Base impact remains fixed for the Term.

14. The 2013-2015 ITS incorporates revenue certainty through the TRA provisions and incentive opportunities to provide incremental revenue and cost sharing opportunities while ensuring that service levels are maintained. The incentive opportunities are intended to provide Trans Mountain with the opportunity to earn a return on equity greater than 9.50% as set out in Section 10 of the 2013-2015 ITS. In return, Trans Mountain has agreed to i) provide some cost certainty through the defined Fixed Costs, ii) pursue new business opportunities that are intended to enhance overall System capacity, iii) provide for a co-operative and collaborative decision-making process, and iv) align risks and rewards with respect to capacity and power incentives and any new business opportunities.

15. Trans Mountain and Shippers will conduct annual reviews of the capacity and power incentives and will apply to the Board for approval of any agreed to changes.

16. The 2013-2015 ITS contains a dispute resolution process to be used where parties are unable to resolve a disagreement regarding a matter respecting tolls or the Revenue Requirement, or where a matter was not anticipated or adequately provided for in the 2013-2015 ITS.

III. CALCULATION OF TOLLS

17. Trans Mountain will determine tolls required to recover the 2013 Revenue Requirement at the System Throughput level. There are no changes to Trans Mountain's toll design methodology as approved by the Board under Order TO-02-2009 with the exception of a new environmental surcharge discussed and agreed to by Shippers.

18. The new environmental surcharge has been added to permit Trans Mountain to recover environmental remediation costs incurred at the Edmonton terminal. These costs will be recovered from all users of the Edmonton terminal, including Mainline System Shippers and non-mainline System users with no abatement through the approved toll design. The environmental surcharge will be filed in conjunction with the application for approval of the 2013 tolls. An illustration of the surcharge is provided in TL Schedule 10.

19. System Throughput is forecast based on current and near-term market conditions, customer demand, supply, previous year's performance and, at a minimum, 93% of hydraulic capacity at the forecast heavy composition.

20. The 2013-2015 ITS contains a summary of the Westridge Dock Bid Premiums collected since 2010 and an illustration for refunding the Westridge Dock Bid Premiums

collected in 2011 and 2012. Shippers and CAPP have agreed that the 2011 and 2012 Westridge Dock Bid Premiums will be refunded to Shippers over a period that extends beyond 2013, subject to NEB approval. In the Board's 20 July 2006 Decision, the NEB required disposition of the Westridge Dock Bid Premiums in the calendar year following its collection. A Review and Variance to the Board's Decision will therefore be filed in conjunction with the application for approval of the 2013 tolls. The magnitude of Westridge Dock Bid Premiums collected to date necessitates separate discussions with Shippers and reporting on these discussions to the NEB. It is expected that the parties will reach an agreement on the refund. An illustration of the refund is provided in Schedule 8.4.

21. For 2013, the tolls in effect at the end of 2013 will become interim tolls for 2014, effective January 1, until a subsequent Order of the Board is issued.

IV. INCENTIVES

22. Trans Mountain and Shippers have agreed to a capacity incentive and two power incentives that provide incremental revenue and cost saving opportunities while ensuring that service levels are maintained. All three incentives provide for equal sharing (50% to Trans Mountain and 50% to Shippers) of any incremental revenues net of incremental costs are obtained. Trans Mountain will conduct annual reviews with Shippers to evaluate each incentive and will apply to the NEB for approval of any changes resulting from these reviews.

(a) The capacity incentive provides Trans Mountain with an opportunity to improve overall System capacity. It is expected that such improvements in capacity will use available assets and manpower and will be achieved through scheduling and operational improvements. Trans Mountain revisited its 2010 hydraulic formula and it was determined that this formula appropriately simulates System capacity under representative heavy batch line-ups for volumes exiting Edmonton and Edson. The formula will be adjusted to reflect System shutdowns, maintenance activities or Shipper actions. The Capacity Incentive Adjustment will be calculated for each year of the Term but is only applicable to the last eight (8) months of 2013.

The Capacity Incentive Adjustment is shared equally between Trans Mountain and Shippers subject to the sharing mitigation demonstrated below. The Capacity Incentive Adjustment is calculated using the incremental revenues generated from volumes exiting Edmonton and Edson and delivered out of the System multiplied by the average toll paid for such deliveries, after adjusting for TRA.

The sharing mitigation formula is structured to return to Shippers a portion of the Divestiture adjustment as annual improvements in capacity are achieved. Between 94% and 98.5% of System capacity, the formula transfers a portion of the Capacity Incentive Adjustment from Trans Mountain's 50% share to the Shipper's share, resulting in Trans Mountain's share being adjusted downward and the Shipper's share being adjusted upward, such that

(i) Between 94% and 98.5% the Sharing Mitigation Factor applied to the annual Divestiture amount is calculated as

$$= \frac{\text{achieved capacity adjusted for maintenance} - 94\%}{98.5\% - 94\%}$$

(ii) If the achieved capacity percentage is less than 94%, none of the annual Divestiture amount will be refunded.

(iii) If the achieved capacity percentage is greater than 98.5%, all of the annual Divestiture amount will be refunded.

(iv) An illustrative calculation of the Capacity Incentive Adjustment and the sharing mitigation formula is provided in Schedule 5.

The Capacity Incentive Code of Conduct that governs interactions between Trans Mountain and Shippers has been developed to create a set of guidelines that will balance the interests of both parties without significantly impacting Petroleum quality while achieving the overall intent of the Capacity Incentive.

(b) The Power Incentive for transmission volume improvements is designed to encourage Trans Mountain to pursue reductions in the annual average monthly billing demand by managing and negotiating power supply contracts and physical consumption to a lower utilization level without impacting throughput. The annual cost savings is calculated as the difference between an agreed to baseline utilization and the actual invoiced billing demand multiplied by the annual average demand rate for transmission. This annual cost savings amount net of incurred expenses such as vendor costs, consulting fees or any carryover adjustments that are incurred to negotiate power savings or the incentive amount is then shared equally between Trans Mountain and Shippers. Section 11.5 parts (a) and (b) of the 2013-2015 ITS details the Transmission Volume Incentive Adjustment and Schedule 4.1(a) provides for its calculation methodology.

(c) The Power Incentive for BC energy price improvements is structured to incent Trans Mountain to obtain energy under a lower alternate rate set out in BC Hydro's Electric Tariff, Rate Schedule 1823 (the Electric Tariff Rate Schedule 1823 sets out two rates, a higher passive or baseline rate available to all industrial users and a lower alternative rate that requires additional administrative work to obtain). The lower alternate rate requires annual reviews and negotiations with BC Hydro to obtain credits under the Power Smart program to purchase energy at the lower price. The annual cost savings is calculated as the difference between the actual price paid and the higher passive or baseline rate multiplied by the actual annual consumption. This cost savings amount net of incurred costs or the incentive amount will be shared equally between Trans Mountain and Shippers. Section 11.5 parts (c) and (d) of the 2013-2015 ITS details the BC Hydro Energy Price Incentive Adjustment and Schedule 4.1(b) provides for its calculation methodology.

V. DEFERRAL ACCOUNTS

23. Pursuant to the 2013-2015 ITS, Trans Mountain is authorized to establish deferral accounts to record variances in the following costs (including Carrying Charges):

(a) Return on and of Capital Adjustment;

(b) Transportation Revenue Adjustment;

(c) Capacity Incentive Adjustment;

(d) Power Cost Incentive Adjustments;

(e) Flow Through Cost Adjustments;

(f) NRAs and NRA Adjustments;

(g) Provision for Income Tax Adjustment; and

(h) New Business Opportunity Adjustments.

VI. COMMUNICATIONS

24. All notices and communications relating to this Application shall be directed to:

Trans Mountain Pipeline L.P.
2700, 300 – 5th Avenue SW
Calgary, Alberta T2P 5J2

Attn: Brenda McClellan
Director, Regulatory Affairs
Direct Dial: 403-514-6565
Fax: 403-514-6622
brenda_mcclellan@kindermorgan.com

AND TO:

Attn: Heather Mark
Director, Forecasting & Economics
Direct Dial: 403-514-6547
Fax: 403-514-6622
heather_mark@kindermorgan.com

VII. RELIEF REQUESTED

25. The 2013-2015 ITS is supported by CAPP and Shippers who have indicated their acceptance of the Application. In Trans Mountain's respectful submission, the methodology set out in the 2013-2015 ITS will result in tolls that are just and reasonable, and pursuant to the provisions of the *National Energy Board Act* (the "*NEB*

Act"), respectfully requests that the NEB approve this Application. Trans Mountain hereby applies for an Order or Orders of the Board:

(a) approving the 2013-2015 ITS;

(b) approving the methodology set out in the 2013-2015 ITS for calculating and determining Trans Mountain's tolls for the Term;

(c) authorizing, in connection with the 2013-2015 ITS and the determination of tolls thereunder, the establishment of deferral accounts to record expenses and credits (including applicable Carrying Charges), all of which are set out in detail in the 2013-2015 ITS;

(d) approving the new methodology for managing Petroleum Losses as set out in Trans Mountain's Inventory Settlement Procedure and Refined Petroleum Reconciliation Procedure;

(e) approving changes to Trans Mountain's Petroleum Tariff: Rules and Regulations, Rules 11.4 and 12.3, to implement the Inventory Settlement Procedure and the Refined Petroleum Reconciliation Procedure;

(f) relieving Trans Mountain from the requirement to file financial forecasts and financial surveillance reports quarterly, and allowing Trans Mountain to annually file the schedules attached hereto as Schedules 10 NEB 1 to NEB 3; and

(g) Such further and other relief as Trans Mountain may request or as the NEB may deem appropriate.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at Calgary, Alberta, this 13th day of March 2013.

TRANS MOUNTAIN PIPELINE L.P. and
TRANS MOUNTAIN PIPELINE ULC

Per: B McClellan

Brenda McClellan