

BY ELECTRONIC FILING

December 12, 2014

Secretary of the National Energy Board
National Energy Board
517 10th Ave SW
Calgary, AB T2R 0A8

Dear Ms. Young:

Re: Trans Mountain Pipeline ULC - Trans Mountain Expansion Project File OF-Fac-Oil-T260-2013-03 02 – Hearing Order OH-001-2014 Follow-up letter in Response to Trans Mountain Pipeline ULC's reply to Province of BC's Motion in a letter dated December 11, 2014—Corrections to Trans Mountain's claims.

The Intervenor Robyn Allan is writing in relation to the Notice of Motion written by the Province of British Columbia (the Province or BC) filed on December 5, 2014 and the reply letter filed by Trans Mountain Pipeline ULC on December 11, 2014. The Intervenor Robyn Allan did file a response letter to the Province of BC Motion on December 11, 2014 prior to the deadline to do so, however, this follow-up letter is necessary because of factual errors in Trans Mountain's response letter filed close to the deadline for letters on December 11, 2014.

The purpose of this letter is to correct misinformation in Trans Mountain Pipeline ULC's letter for the benefit of the Board and all Intervenors. This letter is not an attempt to add information as the deadline for Intervenor's to do so has passed. This letter is to correct representation made by Trans Mountain with the facts.

In particular, Trans Mountain states on page 10, "BC requests in its Motion that the Board order Trans Mountain to file WCMRC's Oil Spill Response Plan and responses to the outstanding items as committed to in its response to BC's IR Motion. The "outstanding" items relate to information BC has requested that is in the possession of third parties; namely, WCMRC, CEPA and PMV."¹

Western Canada Marine Response Corporation is not a third party. Trans Mountain Pipeline LP is the majority owner of WCMRC, has representation on the WCMRC's Board and profits from spill preparedness and response services that the company provides. According to Trans Mountain Pipeline ULC, Trans Mountain Pipeline LP's current proportionate share of WCMRC is

¹[https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/2558704/2584291/Response to Province of British Columbia Notice of Motion dated December 5%2C 2014.%2D_A4F9H5.pdf?nodeid=2583678&vernum=-2](https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/2558704/2584291/Response%20to%20Province%20of%20British%20Columbia%20Notice%20of%20Motion%20dated%20December%205%2C%202014.%2D_A4F9H5.pdf?nodeid=2583678&vernum=-2)

50.9%.² The remaining shareholders of WCMRC are four oil producers—Imperial Oil, Shell, Chevron, and Suncor.³

The Intervenor Robyn Allan requested clarification in IR No. 1 respecting the ownership and control of WCMRC because, through Trans Mountain’s ownership of the organization, the oil spill preparedness and response regime is an opportunity for Trans Mountain to profit from spill preparedness and response.

From 2009 - 2013 Trans Mountain Pipeline LP netted \$480,000 in profits related to its share in the ownership of WCMRC.⁴ These profits would have been distributed to Kinder Morgan Energy Partners LP (Trans Mountain Pipeline LP’s former 100% owner) and in future will be distributed to Kinder Morgan Inc. (Trans Mountain Pipeline LP’s new 100% owner) in Houston, Texas as determined by the partnership agreement(s) governing Trans Mountain Pipeline LP.

The opportunity for Kinder Morgan Canada Inc.—and hence Trans Mountain’s parent Kinder Morgan Inc.— to profit from spill preparedness and response also exists through its ownership share in Western Canadian Spill Services Ltd. (WCSS), the terrestrial based spill preparedness and response organization. Kinder Morgan Canada Inc. holds 25% of the shares of WCSS.⁵ The remaining shareholders of WCSS—Enbridge Pipelines Inc., Canadian Association of Petroleum Producers (CAPP) and the Explorers and Producers Association of Canada—each hold a 25% interest in WCSS. Kinder Morgan has representation on WCSS’ Board.

It is imperative that the NEB understand the non-arms length relationship between Trans Mountain Pipeline ULC—as general partner of Trans Mountain Pipeline LP—and WCMRC, as well as the relationship between Kinder Morgan Canada Inc.—as operator under contract of Trans Mountain Pipeline LP—and WCSS, the terrestrial and marine spill preparedness and response organization.

It is also important for the Board and Interveners to understand that when Trans Mountain Pipeline ULC states the need to protect the commercial confidentiality of these organizations it is doing so for the protection of Kinder Morgan Inc.’s indirect, and its subsidiaries’ direct, interests in these entities, not to protect the interests of a third-party.

² Trans Mountain Response to Allan R, IR No.1.25, Oil Spills a Kinder Morgan Business Opportunity, page 212, <https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/2451003/2478117/B40%2D1%2D%2D%20Trans%20Mountain%20Response%20to%20Allan%20R%20IR%20No.%201%20A3X5V9.pdf?nodeid=2480550&vernum=-2>

³ Robyn Allan, Canadian Ship-Source Spill Preparedness and Response, An Assessment, submitted to the Tanker Safety Expert Panel, June 21, 2013. <http://www.robynallan.com/wp-content/uploads/2013/06/Canadian-Ship-Sourced-Spill-Preparedness-and-Response-June-21-2013.pdf>

⁴ Trans Mountain Response to Allan R, IR No. 1.25 (g), op cit.

⁵ Government of Alberta, Corporate Search, Corporate Access Number 217241322, Western Canadian Spill Services Ltd, Voting Shareholders

Trans Mountain Pipeline ULC consistently represents the marine and terrestrial spill preparedness and response organizations as if they are third parties when they are not. They are profit making business centres for Kinder Morgan Canada Inc., Trans Mountain Pipeline LP, and their affiliates.

If you have any questions, please do not hesitate to contact robyn@robynallan.com or at 604-962-4160.

Sincerely,

Robyn Allan
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