

November 6, 2013

National Energy Board
444 Seventh Avenue SW
Calgary, Alberta
T2P 0X8

**Attention: Ms. Sheri Young
Secretary of the Board**



Barristers & Solicitors / Patent & Trade-mark Agents

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Dear Ms. Young:

Re: Application to the National Energy Board (Board) by Trans Mountain Pipeline ULC on behalf of Trans Mountain Pipeline L. P (collectively Trans Mountain) for Tariff Amendments Regarding Verification Procedures, pursuant to the Board's Direction in Reasons for Decision MH-002-2012

We are writing on behalf of Imperial Oil Limited ("Imperial Oil") and Suncor Energy Products Partnership ("Suncor") in response to the letter from the Board dated October 30, 2013. In its letter, the Board solicits comments respecting:

- Trans Mountain's request for an interim order;
- the process for the Board's consideration of "the unresolved Tariff issues";
- the statement by Trans Mountain, in paragraph 20 of the Application, that there are no concerns with the proposed amendments to Rules 1.4, 6.1, 6.2 and 6.4 of the Tariff.

GENERAL COMMENTS

Before addressing the three specific matters raised by the Board, some general comments are warranted.

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In its MH-002-2012 Decision (page 29), the Board provided the following direction to Trans Mountain:

"In light of what the Board has heard, Trans Mountain is directed to revise its nomination or capacity allocation procedures to address the current apportionment on the Pipeline. In doing so, the physical limits of the Puget Sound Pipeline should be given due consideration."

Trans Mountain subsequently had discussions with its shippers in an effort to find an acceptable approach but was unable to reach a "comprehensive resolution".¹

Trans Mountain now suggests in the Application that:

- shippers are content with the proposed amendments to Rules 1.4, 6.1, 6.2 and 6.4²;
- shippers support the use of historic Deliveries to establish Verification Limits to address apportionment on the Pipeline, as contemplated by the proposed Rule 6.3³;
- all that remains to be considered by the Board are four issues that relate to determining the historic Deliveries and calculating the Verification Limits.⁴

This certainly does not reflect the views of Imperial Oil and Suncor. They are not satisfied that any of the proposed Tariff amendments are an appropriate response to the Board's direction to address the current apportionment on the Pipeline.

Imperial Oil and Suncor intend to be active in the proceeding established by the Board to consider the Application. They can advise that their focus will be much broader than the four specific issues identified by Trans Mountain concerning how historic Deliveries should be determined.

REQUEST FOR INTERIM ORDER

Trans Mountain requests an interim order from the Board requiring that any shipper that is unable to provide third party verification from a non-affiliate must instead provide an officer's certificate in the form set out in Attachment 3 to the Application in order to satisfy the verification requirement in the Tariff.⁵ Imperial and Suncor are opposed to this request.

¹ Application, paragraph 3

² Application, paragraph 20

³ Application, paragraph 5

⁴ Application, paragraph 5. These four issues are presumably the "unresolved Tariff issues" to which the Board refers in its October 30, 2013 letter.

⁵ Application, paragraph 9

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What Trans Mountain is effectively asking for is interim approval of its proposed Rule 6.2 (Nomination Verification) and proposed Rule 1.4 (definition of Affiliate). Whether these proposed Rules should be approved is a determination that can and should be made by the Board only after it considers evidence and argument with respect to the Application. Imperial Oil and Suncor agree with Phillips 66 Canada Ltd. that:

"... all issues presented in Trans Mountain's application are inextricably linked and should be fully considered at the same time through the hearing process."⁶

PROCESS FOR CONSIDERING THE APPLICATION

The Board's letter invites comments regarding "the process for the Board's consideration of the unresolved Tariff issues". As already mentioned, Imperial Oil and Suncor do not consider that any of the Tariff amendments proposed in the Application have been "resolved". The outstanding issues requiring adjudication are much broader than the four specific issues identified by Trans Mountain relating to how historic Deliveries should be determined.

It is the submission of Imperial Oil and Suncor that the Board should establish an oral hearing process that provides an opportunity for the cross-examination of parties on their evidence. The process should also contemplate the likelihood that individual shippers will advance their own proposals to address the current apportionment on the Pipeline and that such proposals will be opposed by other shippers. The process should therefore include:

- information requests to Trans Mountain
- information responses from Trans Mountain
- evidence from interveners
- information requests to interveners
- information responses from interveners
- reply evidence from interveners to evidence of other interveners
- reply evidence from Trans Mountain
- oral hearing

⁶ Stikeman Elliott LLP letter dated October 23, 2013, page 3

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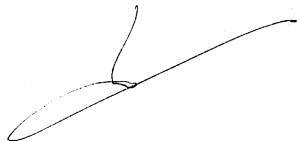
STATEMENT IN PARAGRAPH 20 OF APPLICATION

Trans Mountain states that it discussed the amendments to Rules 1.4, 6.1, 6.2 and 6.4 with shippers at its October 8, 2013 General Shipper Meeting and that no concerns were raised. Imperial Oil and Suncor would note that the proposed Tariff revisions were just one item on the agenda for this meeting and there was minimal discussion about them, because Trans Mountain advised that the negotiated settlements had failed, that it would be moving forward with its Rule 6 filings on October 15, 2013, and that shippers could submit their own proposals.

Imperial Oil and Suncor cannot provide the confirmation requested by the Board respecting paragraph 20 of the Application. They have concerns with the proposed amendments to Rules 1.4, 6.1, 6.2 and 6.4 of the Tariff. They do not believe that these amendments are an appropriate response to the Board direction to address the current apportionment on the Pipeline.

Yours truly,

Norton Rose Fulbright Canada LLP

A handwritten signature in black ink, appearing to read 'D.G. Davies', with a stylized flourish at the end.

D.G. Davies

cc. Trans Mountain Pipeline ULC
Attn. Kevin MacFarlane
Attn. Heather Mark

Bennett Jones LLP
Attn. Marie Buchinski