

# RATCLIFF & COMPANY LLP

Lawyers

March 17, 2014

File No. 130010  
Reply to: Gregory J. McDade, Q.C.  
Email: gmcdade@ratcliff.com

## BY FAX

National Energy Board  
444 Seventh Ave. SW  
Calgary, AB T2P 0X8

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

Dear Sirs/Mesdames:

**Re: Trans Mountain Pipeline ULC (“Trans Mountain”) – Trans Mountain Expansion Project (the “Project”)**  
**File OF-Fac-Oil-T260-2013-03 02**

We are legal counsel for the City of Burnaby (“Burnaby”) and are writing to express our concern about the completeness of the Facilities Application for the Project submitted by Trans Mountain on December 16, 2013 (the “Application”). Burnaby has filed an Application to participate as an intervenor in the hearing for the Project. Burnaby is concerned that the Application is incomplete in that it does not satisfy the requirements as set out in the National Energy Board Filing Manual (the “Manual”) and the Filing Requirements Related to the Potential Environmental and Socio-Economic Effects of Increased Marine Shipping Activities attached to the letter from the National Energy Board (NEB) to Trans Mountain dated September 10, 2013.

The Application does not provide sufficient information to enable potential participants in the public hearing to determine how they would be impacted by the Project and how they could respond to the issues raised by the Project with their own evidence. We appreciate that further information will be forthcoming throughout the process, however, the Application must meet the minimum standards as required by the law and natural justice.

Burnaby considers the Application to be significantly deficient in a number of key areas that cannot be corrected without the resubmission of a revised Application. Those areas include:

- **Selection Criteria for the Proposed Route** – the Application does not provide sufficient information on the criteria used to determine the proposed route, and route alternatives, for the Project, as required by s. 4.1 of the Manual. The Application does not provide any justification for the conclusion that the decision to run the new pipeline (Line 2) contiguous with the existing pipeline (Line 1) will minimize the environmental and socio-

economic effects of the Project. The Application does not provide any information on the specific criteria used to determine the routing alternatives for the proposed two new distribution lines from the Burnaby Mountain Terminal to the Westridge Marine Terminal or a comparison of those alternatives. Further, the Application does not provide any justification for the siting of the facilities associated with the Project. Given the location of the Burnaby Mountain Terminal and the Westridge Marine Terminal in proximity to Burnaby's neighbourhoods, Trans Mountain has not provided any information on the criteria used to determine to expand those operations, as opposed to having the new pipeline and distribution lines routed to a different destination. Burnaby, and other intervenors, require this information to be able to respond to the Application.

- **Feasibility of Pipeline Routing through the Study Corridors** – Within the study corridors (selected and alternative) there are both underground and surface infrastructure, which are integral to the function and operations of Burnaby including, but not limited to, City infrastructure and utilities (water, sanitary, storm and sewer), rail, road, transit network infrastructure and Metro Vancouver regional utilities and infrastructure. To the extent that the Application discusses Project Design and Execution – Engineering, it does not adequately address the potential conflict between the proposed pipeline (Line 2) and existing infrastructure, both from an engineering design view point (technical scope), and the ability of Burnaby to continue to provide these infrastructure services, particularly as it relates to maintenance operations and future works. Potential significant conflict areas within the study corridors, include the following segments:
  - **Lougheed corridor (segment between North Road and Galgardi Way)** – City infrastructure and utilities are located within this segment including, but not limited to, water, storm, GVWD, GVS & DD sanitary trunk and the TransLink Millennium Skytrain line and right-of-way.
  - **BNR Railway/Brunette River/Stoney Creek Ravine corridor (connecting to Galgardi Way)** – this segment is encumbered with infrastructure and utilities including, but not limited to, GVS & DD sanitary trunk, storm and sanitary mains. This segment also serves as a rail transportation corridor for the movement of goods across the region.
  - **Burnaby Mountain Parkway distribution line corridor from Burnaby Mountain Terminal to Westridge Marine Terminal** – this segment has City infrastructure and utilities including, but not limited to, watermain and pump station (Burnaby Mountain Station), storm and streams.
  - **Cliff Avenue distribution line corridor from Burnaby Mountain Terminal to Westridge Marine Terminal** – this segment has GVS & DD sanitary trunk and pump station.
  - **Burnaby Mountain Conservation Area corridor at Barnet Road Intersection** – City storm infrastructure is located at this intersection of Barnet Road.

The study corridors for the proposed pipeline (Line 2) within Burnaby follow a significant length of corridors that are identified as major transportation corridors within Burnaby and the broader Metro Vancouver region (i.e. Lougheed Highway, BNR rail corridor and

Burnaby Mountain Parkway). These corridors carry significant traffic (vehicle, truck and rail) volume. The Application fails to address at all the long term effect of the repetitive and heavy traffic load and volume on the integrity of the pipeline, and the added public safety risk associated with the presence of the pipeline in these high traffic locations.

- **Identification of Environmental Areas and Impacts** – The Project, and more specifically the proposed routing of the pipeline (Line 2), encroaches into environmentally sensitive areas and conservation lands, including Brunette River, Burnaby 200, and Burrard Inlet conservation areas. The Application does not provide sufficient information on these areas or an adequate assessment of the impacts of the Project on these areas. The proposed study corridors do not adequately account for all water courses/local water shed that could be impacted, as well as piped drainage and open ditches that form part of the stormwater system.
- **Identification of Valued Components** – Section A.2.6 of the Manual requires the applicant to describe which biophysical or socio-economic elements in the study area are of ecological, economic or human importance and require more detailed analysis that takes into account the results of public consultation. The Application does not adequately identify and provide information on the valued components within the Project area. Throughout the consultation process the citizens of Burnaby, for example, raised concerns about the proximity of the Project to residents; impacts of the Project on their health, property values and schools; the environmental and visual impact of the expansion of the Westridge Marine Terminal and Burnaby Mountain Terminal; the impact of the Project on nearby conservation areas and community lands; the impact of the Project on water quality, including ground water; the increased demands on local and regional services as a result of the Project; and the impact of the Project on city infrastructure. These concerns remain outstanding and were not resolved within the consultation process. These issues should be analyzed in detail and the information and its outcomes should be provided in the Application.
- **Cumulative Environmental Effects** – the Application does not provide sufficient information on any remaining cumulative effects of the Project, after mitigation measures, as required by s. A.2.7 of the Manual. The spatial and temporal boundaries selected for the effects analysis are overly restrictive. The Application emphasizes current or existing conditions and makes no or little mention of trend-over-time data. It is essential to identify existing cumulative effects as a part of the context of the receiving environment. Burnaby is particularly concerned that the Application does not address or provide sufficient information on the ongoing effects of the 2007 Trans Mountain oil spill in Burnaby. Further, information is required on cumulative effects until there is no reasonable probability of measureable effects from the Project, not just for the lifespan of the Project. Currently, the Application does not provide a sufficient analysis on cumulative effects for the NEB, the public and Burnaby to weigh the impacts of the Project.
- **Safety and Security: Effects Assessment for Accidents and Malfunctions** – Section A.2.6 of the Manual states that the applicant's environmental and socio-economic effects assessment must identify and assess the effects on workers, the public, and biophysical and socio-economic elements of all potential accidents and malfunctions. As noted in the manual, accidents and malfunctions and associated emergencies can result from numerous types of events, including pipeline and equipment failure, human error, natural

perils such as tornadoes, hurricanes, floods, or earthquakes, and wilful acts of terrorism, vandalism, trespassing or other criminal activities. The Application does not adequately address all of the potential types of accidents and malfunctions for the Project. It focuses specifically on oil spill risks and oil spill scenarios. It does not provide information on the very real possibility of other emergencies including, for example, criminal activities and earthquakes. In addition, even in relation to oil spills the Application does not provide sufficient information, as the oil spill scenarios do not capture the extent of the effects of a potential spill on the public, the environment and the economy.

- **Plans to Address Accidents and Malfunctions** – Section A.2.6 of the Manual states that the applicant must describe the plans and measures to address potential effects of accidents and malfunctions during the operation of the Project. The Application does provide sufficient information on how Trans Mountain plans to address accidents and malfunctions. The Application does not provide information on how coordination with industry, municipal, provincial or federal authorities would work in relation to the “third tier” emergencies identified, which Trans Mountain does not have the resources to respond to. Further, the Application does not adequately address how nearby residents will be notified in the event of an accident or spill at the Terminal facilities and/or along the pipeline. The application also does not provide sufficient information on an evacuation plan. There appears to be an unverified assumption that Burnaby will respond with municipal fire and other emergency services, but the Application does not provide sufficient information to assess those capabilities. Trans Mountain also does not provide information in the Application on any agreements or arrangements reached with these authorities to enable it and them to respond to these types of emergencies. Burnaby is concerned, for example, that the Application does not provide any information on the capacity of Trans Mountain, or local fire departments, to respond to a fire at the Burnaby Mountain Terminal or other fires, for example, during loading at the Westridge Marine Terminal. This is particularly concerning given the proposed in-situ burning, as a response to oil spills. Without this information, neither the NEB nor Burnaby will be able to assess the risks of the Project to Burnaby’s citizens and the environment.
- **Consultation** – the Application does not provide sufficient information to satisfy that all persons and groups potentially affected by the Project are aware of the Project and that those impacted by the Project have been adequately consulted, as required by s. 3.4.3 of the Manual. Burnaby is concerned that many of its affected citizens have not been made aware of the Project and have not been provided with information in relation to the Project. The Project will have far reaching effects, with the potential for a spill only serving to extend those effects. Given the breadth of the Project, Trans Mountain has improperly limited its consultation area and failed to provide information on consultation with potentially affected groups. The Application does not provide adequate information on the justification for this limited consultation area. The public hearing for the Project should not proceed without the public being made aware of the Project and being given a fair opportunity to identify areas of ecological, economic or human importance that may be impacted by the Project.

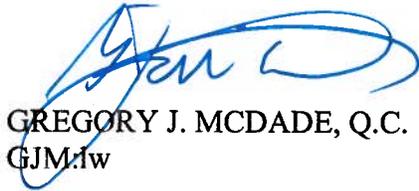
Given these deficiencies, it is clear that Trans Mountain’s Application does not contain the information required by the Manual and is not in accordance with rule 15 of the *National Energy Board Rules of Practice and Procedure*. It does not contain the necessary information for the NEB to make an informed decision about the Project that balances, among other things, the

environmental, economic and social interests. It also does not contain sufficient information for the public to understand and analyze the impacts of the Project.

It is the responsibility of Trans Mountain to provide the NEB and the public with the information that they need to evaluate and respond to the Project. The burden should not be placed on potential participants in the hearing to go through multiple information requests to supplement the information provided in the application. In light of the deficiencies in information in the application, we submit that the NEB should consider the application to be incomplete.

Yours truly,

RATCLIFF & COMPANY LLP



GREGORY J. MCDADE, Q.C.  
GJM:fw

cc: Mayor and Council, Burnaby  
Shawn Denstedt, Q.C., Osler, Hoskin & Harcourt LLP  
Scott Stoness, Trans Mountain Pipeline ULC