



To: General Purposes Committee

Date: December 1, 2014

From: John Irving, P.Eng. MPA
Director, Engineering

File: 10-6125-30-005/Vol 01

Amarjeet S. Rattan
Director, Intergovernmental Relations & Protocol Unit

Re: Trans Mountain Pipeline Project NEB - Update and Intervenor Opportunities

Staff Recommendation

That:

1. The attached staff report titled “Trans Mountain Pipeline Project National Energy Board (NEB) – Update and Intervenor Opportunities” from the Director, Engineering and Director, Intergovernmental Relations & Protocol Unit, dated November 28th 2014, which provides details on the Kinder Morgan-led pipeline expansion project and National Energy Board (NEB) review process, be received for information; and that
2. Staff proceeds with a submission for Information Requests to the NEB, detailed in Attachment 1, for the January 9, 2015 NEB deadline for Intervenor’s Status.

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(604-276-4140)

Amarjeet S. Rattan
Director, Intergovernmental Relations & Protocol Unit
(604-247-4686)

Att. 1

| REPORT CONCURRENCE | | |
|--|-------------------------------------|---------------------------------------|
| ROUTED TO: | CONCURRENCE | CONCURRENCE OF GENERAL MANAGER |
| Emergency Programs | <input checked="" type="checkbox"/> | |
| Fire Rescue | <input checked="" type="checkbox"/> | |
| Law | <input checked="" type="checkbox"/> | |
| REVIEWED BY STAFF REPORT / AGENDA REVIEW SUBCOMMITTEE | INITIALS: | APPROVED BY CAO |

Staff Report

Origin

At the February 11, 2014 Regular Council meeting the following resolution for the Trans Mountain Pipeline NEB Review was adopted:

That staff be directed to apply for Intervenor status, or Commenter status in the alternative, in the National Energy Board Review process for the Trans Mountain Pipeline Project.

The City was granted Intervenor status by the NEB on April 2, 2014.

The intent of this report is to provide an update on the National Energy Board (NEB) process for the Trans Mountain Pipeline Project and seek Council direction for staff to proceed with the submission of Information Requests for the January 9, 2015 deadline.

Background

NEB Review Process Update

The Trans Mountain Pipeline project being carried out by Kinder Morgan (“the Proponent”) is proceeding through the NEB review process. As an Intervenor, the City may participate in the review process by making an Information Request (IR) to the Proponent during prescribed time periods. Since the Information Memorandum issued to Council on October 16, 2014, the Proponent has offered further information to the NEB in relation to earlier inadequate Information Request responses, although many Intervenors have continued to express that the information received is inadequate.

The City of Burnaby has continued to oppose the project and assert its dissatisfaction with the oversight provided by the NEB, both in the media and in the courts. The BC Supreme Court denied an injunction sought by Burnaby to prevent drilling investigations which were in contravention of the City’s Bylaws, and the survey work did proceed within the City’s Conservation Area. This survey work on Burnaby Mountain has met with public protest, including the detainment of several dozen protestors by the RCMP for violations of a second court injunction protecting the Proponent’s ability to carry on survey work.

Staff are also in discussions on this issue with other municipalities through Metro Vancouver.

Upcoming Timelines

Due to procedural delays, the NEB had previously updated its calendar for the review, although the timeline has not significantly shifted since the October 16, 2014 Information Memorandum issued to Council. There are several opportunities in 2015 for the City to engage in the review process as an Intervenor. Participation in any or all of these steps is at the discretion of the City:

- January 9: Deadline for Intervenors to submit “Information Requests” to the Proponent as part of the second phase of requests (IR2). The City may request information relevant to any area of concern in the Project Application or previous IRs submitted by Intervenors. The Proponent then has one month to reply to all IRs.
- May 1: Deadline for Intervenors to file Written Evidence. This can include any collection of facts or information that supports the City’s views or beliefs about the project. This may include original research, analysis of the facts included in the Application or in information provided through the IRs.
- May 25: Deadline for Intervenors to submit Phase 3 Information Requests (IR3). This round of IRs permits any Intervenor to direct questions to any other Intervenor, or the Proponent, to provide review of submitted Written Evidence. Note that this represents less than three weeks from the deadline to submit said Written Evidence, limiting the ability to analyze evidence in great depth.
- September: Hearings for any Intervenors interested in providing an oral summary argument. At this time, oral arguments will be received by the NEB Panel, however, no new evidence will be permitted at this time (evidence must have been previously submitted as part of the Written Evidence, or as a reply to an Information Request received by the Intervenor), nor will there be opportunity for cross-examination of the arguments provided by the Proponent or Intervenors.

The NEB is scheduled to release their final report on the review process and recommendations to the Minister on January 25, 2016.

Information Request Overview/Suggestions

Pending Council direction, City staff will prepare to submit an IR2 submission to address the two primary areas of concern identified by Council at the February 3, 2014 General Purposes Committee Meeting:

- Project Footprint: Since the process of NEB review began, Kinder Morgan have made several changes to the project footprint, including a fundamental shift in routing to include a bored tunnel through the Burnaby Mountain Conservation Area and a new routing through Surrey Bend Regional Park. Richmond City Council has previously expressed that route changes that are introduced at intermediate or late stages of the process do not provide adequate opportunities for communities or individuals that may be impacted to properly partake in the review process.
- Protection of the Fraser River: A significant spill from the pipeline in the vicinity of the Fraser River crossing (at Port Mann), or within any of a dozen watercourses being crossed between Langley and Burnaby, would likely result in the introduction of a volume of hydrocarbons into the Fraser River. Much of this product would be “entrained” along the foreshore of Lulu Island, which contains regionally-important ecosystem services, RAMSAR-designated wetlands of international importance, and vital job-

supporting lands within the City of Richmond. Local government agencies are being pressed to deal with spill events as senior governments reduce staffing levels of the agencies responsible for protecting navigable waters, natural areas, and fishery habitats.

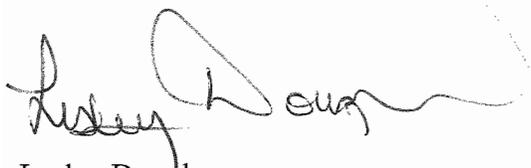
Based on these two primary areas of Council concern, staff have compiled a list of suggested Information Requests related to each concern in Attachment 1.

Financial Impact

There is no financial impact resulting from this report.

Conclusion

Although the project footprint is outside of Richmond, Council has identified concerns in regards to the project and potential risks to Richmond's foreshore areas and has opted to be an Intervenor in the NEB review process. The current round of Information Requests provides the City with an opportunity to seek clarity on potential future changes to the project footprint and challenges for the management of spill response along the Fraser River foreshore.



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AR:ld

Att. 1: Proposed Content for January 9th, 2015 Information Requests

ATTACHMENT 1**Proposed Content for January 9th, 2015 Information Requests:**

City staff are prepared to submit an IR2 submission to address the two primary areas of concern identified by Council at the February 3rd, 2014 General Purposes Committee meeting.

Concern: Project Footprint.

Since the process of NEB review began, Kinder Morgan have made several changes to the project footprint, including a fundamental shift in routing to include a bored tunnel through the Burnaby Mountain Conservation Area and a new routing through Surrey Bend Regional Park. The City of Richmond (COR) understands that minor routing and footprint adjustments would be anticipated through the planning process, as alternate routes that reduce the environmental and socio-economic risk of the project may be identified and become preferred options for the majority of stakeholders. However, the COR is very concerned that route changes that are introduced at intermediate or late stages of the process do not provide adequate opportunities for communities or individuals that may be impacted to properly partake in the review process.

Information Request:

- What were the criteria used to establish the routing and site of the project?
- What other options were reviewed in regards to routing and siting of facilities, and what were the factors that caused the other options to not be selected for public review?
- Are more revisions of the siting and routing of the project anticipated?
- On what date will the final routing of the project be finalized?
- What principles are applied to determine if project changes, including footprint changes, require initiating a new review process under the NEB Act? Specifically, which of these changes would require a new NEB review process to be initiated:
 - A shift in export terminal location;
 - A change in the size or layout of the storage facility in Burnaby Mountain, or movement of this terminal;
 - The introduction of a new storage facility along the route between the existing facilities in Edmonton and Burnaby;
 - A change in the proposed Fraser River crossing location or technology;
 - A change in routing that results in expansion of the project footprint to a different municipality, Regional District, or other administrative area;
 - An expansion of accessory pipelines, such as the Kinder Morgan owned spurs to Cherry Point in Washington State and Vancouver International Airport;
 - A change in the throughput capacity or number of pipelines within the project right-of-way;
 - A change in the proposed mix of products to be transmitted (refined product vs. dilbit), or the introduction of condensate import and upstream shipment.

Concern: Protection of the Fraser River (fate and effects). The Fraser River presents various challenges to the management of spilled heavy oil products. A significant spill from the pipeline in the vicinity of the Fraser River Crossing (Port Mann), or within any of a dozen watercourses being crossed between Langley and Burnaby would result in an introduction of a large volume of

hydrocarbons either directly into the Fraser River, or into a combination of storm drainage and natural watercourses that would connect rapidly to the Fraser River. Much of this product would be “entrained” along the foreshore of Lulu Island, which contains regionally-important ecosystem services and RAMSAR-designated wetlands of international importance. The lower Fraser River also includes significant job-supporting land-use vital to the City of Richmond’s economic base.

Information Request:

- Provide a detailed assessment of the areas of Lulu Island foreshore that would be impacted in a Worst Case Scenario breach of the pipeline, whether this breach resulted in a spill directly to the Fraser River, or to a direct tributary of the Fraser River in a location that would potentially result in preleased product reaching Lulu Island;
- Provide a detailed inventory of ecological condition of the Lulu Island foreshore areas likely to be impacted by a spill into the lower Fraser River;
- Please provide a detailed explanation of the varying products that will be carried in the pipelines after expansion, and what differing approaches would be required based on a spill of bitumen vs. refined product;
- Provide a detailed fate assessment (portions that will be floating, adsorbed, dissolved, entrained, evaporated, stranded, ingested, etc.) for each of the carried products, that addresses directly in the influence of these factors relevant directly to the lower Fraser River:
 - The highly variable seasonal temperature of the river and the air;
 - The high silt and sediment load in the river;
 - The tide ranges, and extensive intertidal wetlands;
 - The highly variable current, including tidal flux and freshet flows;
 - The presence of the “salt wedge” and mixing zone between fresh and marine water;
 - The influence of marine traffic and log booms on spill distribution.
- Based on the experience of the Marshall Spill of 2010 in Kalamazoo River, what portion of the product is expected to sink, and what would be the approach to addressing sunk product during important fisheries times?
- Provide details of the compensation strategy for lost wetlands adjacent to Lulu Island, and for businesses disrupted by a spill or resultant clean-up efforts.

Concern: Protection of the Fraser River (response gaps). The Federal Government (as represented by the NEB) and the Provincial Government (as outlined in the Ministry of Environment’s “Five Conditions” consultations documents) share jurisdictional authority over the foreshore of the Fraser River. The Federal Government addresses responsibility for spills and response by the agency responsible for the product prior to spillage - be it a railway or trucking company (Transport Canada), a terminal facility (Port Metro Vancouver), a ship (Coast Guard), or a pipeline (National Energy Board). The Province is developing a system where spills are addressed by a Maritime Spill Response Agency if they are into marine and estuarine waters, and a Land-based Spill Response Agency if the spill occurs on land. Increasingly, local government agencies are being pressed to deal with spill events, even in areas of senior government jurisdiction such as the Fraser River foreshore, as senior governments reduce staffing levels of the agencies responsible for protecting navigable waters, natural areas, and fishery habitats.

Information Request:

- Please detail any gap analysis performed to identify the jurisdictional limits of clean-up responsibility and cleanup agency lead;
- Detail anticipated efforts to contain and clean-up such a spill, including upstream and downstream transportation of entrained, adsorbed product;
- Detail any anticipated requirement for response from local government in the event of a spill impacting the lower Fraser River. How will this response be directed, and under what authority?
- Detail any limitations to access to the foreshore or river in the event of a spill and necessary clean-up effort.