



File OF-Fac-Oil-T260-2013-03 02
21 August 2015

To: Trans Mountain Pipeline ULC and all intervenors

Hearing Order OH-001-2014
Trans Mountain Pipeline ULC (Trans Mountain)
Application for the Trans Mountain Expansion Project (Project)
Striking of evidence prepared by or under the direction of Mr. Steven J. Kelly and
postponement of oral summary argument in Calgary and Burnaby

On 28 July 2015, the Governor in Council appointed Mr. Steven J. Kelly as a full-time member of the National Energy Board (Board). Mr. Kelly's appointment is effective 13 October 2015.

On 16 December 2013, in support of its Project application, Trans Mountain filed the [Direct Written Evidence](#) of Mr. Steven J. Kelly of IHS Global Canada Limited.¹ Mr. Kelly's Direct Written Evidence addresses, among other things, the issue of oil market supply and demand. Other evidence filed in this proceeding (for example, evidence filed on behalf of Living Oceans Society) reaches conclusions that are different from those reached by Mr. Kelly. Therefore, if evidence prepared by or under the direction of Mr. Kelly remains on the record, this Panel of the Board may be in the position of having to assess this evidence against that filed by Living Oceans Society after Mr. Kelly's appointment to the Board becomes effective.

There can be no question that public confidence in the impartiality of tribunal decision-makers is integral to the administration of justice. The dual role of Mr. Kelly, as a person who prepared evidence in this proceeding and as a future Board member, may raise concerns about the integrity of this hearing process. With this in mind, the Panel has decided on its own volition to strike from the hearing record all evidence prepared by or the under the direction of Mr. Kelly.

Trans Mountain and intervenors should be aware that the Panel members do not know Mr. Kelly personally. Mr. Kelly has not yet taken his oath of office and, the Panel has not had, and will not have, any contact with Mr. Kelly about its assessment of this Project.

The Panel understands that the Board will be imposing additional measures to allow this hearing to proceed and to ensure its integrity. These measures will ensure that there is no contact between Mr. Kelly and the Panel or its support staff during the period that the Panel is assessing this Project.

.../2

¹ On 20 August 2015, Trans Mountain filed an affidavit by Mr. Stephen Fekete of IHS Global Canada Limited affirming that Mr. Fekete reviewed and adopted the written evidence, including reply evidence, prepared by Mr. Kelly on behalf of Trans Mountain.

It follows from the above that **the Panel will not proceed with oral summary argument in Calgary or Burnaby at this time, nor will intervenors need to file their written argument-in-chief by 3 September 2015.** The Panel acknowledges the efforts and contributions made by all participants in this hearing process to date, and understands that this postponement may cause them inconvenience.

Trans Mountain is directed to provide the following information to the Board on or before **28 August 2015:**

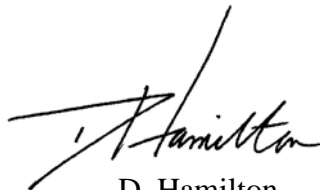
- 1) A list identifying all evidence prepared by or under the direction of Mr. Kelly that was filed in this proceeding.
- 2) Advise the Panel:
 - a) whether Trans Mountain plans to replace this evidence; and
 - b) if so, the date by which this evidence could be filed with the Board and served on all intervenors.

Intervenors may file comments on Trans Mountain's submissions on or before **4 September 2015.**

Trans Mountain may reply to intervenors' comments on or before **11 September 2015.**

Trans Mountain must serve all comments on all intervenors, and each commenting intervenor must serve its comments on Trans Mountain and all other intervenors.

The Panel will issue a procedural update shortly thereafter advising all participants how it intends to conduct the remaining process steps to conclude its review of the Project application.



D. Hamilton
Presiding Member



P. Davies
Member



A. Scott
Member

c.c. All commenters