



# TSLEIL-WAUTUTH NATION

*People of the Inlet*



October 12, 2012

Gaeton Caron, Chair/Chief Executive Officer  
National Energy Board  
444 Seventh Avenue SW  
Calgary, AB T2P 0X8

Sheri Young  
Secretary, National Energy Board  
444 Seventh Avenue SW  
Calgary, AB T2P 0X8

MAIL ROOM  
SALE DE COURIER  
2012 OCT 15 A 8:38  
NEB/ONE

Dear Mr. Caron and Ms. Young,

**Re: National Energy Board Application by Trans Mountain Pipeline ULC/Kinder Morgan Canada/Kinder Morgan Energy Partners L.P. (collectively, "Kinder Morgan"), June 29, 2012. Seeking Approval of Contract Terms and Toll Structure for Proposed Expansion of Trans Mountain Pipeline System.**

Please accept this letter as a formal request from the Tsleil-Waututh Nation to participate in the Hearing Order as Intervenor on the Approval Of The Transportation Service And Toll Methodology For The Expanded Trans Mountain Pipeline System, filed by Kinder Morgan. The Tsleil-Waututh Nation holds Aboriginal title and rights to the area in which the application is located, and holds interests in the tolling application for the reasons outlined in this letter.

The Tsleil-Waututh Nation formally requests Intervenor status at the hearing scheduled to begin on 13 February, 2013 in Calgary, Alberta.

As an Intervenor, the Tsleil-Waututh Nation will seek clarity on how the following issues are addressed in the commercial tolling application:

- 1) The Tsleil-Waututh Nation holds Aboriginal title and rights in the project area. In our view, any change to the existing operation has the potential of creating adverse effects on our Aboriginal title and rights and, therefore, a duty to consult is triggered. We have a vested interest in determining how the Crown intends to accommodate our title and rights in this tolling application.

- 2) Kinder Morgan's rationale to submit to a tolling application prior to the facilities expansion application requires further explanation. If the tolling application is an attempt to separate the financing justification of the TMX facilities expansion from other relevant socio-economic considerations, Kinder Morgan must be clear and transparent with affected First Nations and the Canadian public.
- 3) In its application, Kinder Morgan requests exemptions for Trans Mountain from the filing requirements of the Toll Information Regulations and Guide BB of the NEB Filing Manual, and from certain provisions of the Oil Pipeline Uniform Accounting Regulations. Tsleil-Waututh requires that Kinder Morgan provide further information on the requested exemptions, and the rationale for such exemptions. Tsleil-Waututh Nation understands that Kinder Morgan has negotiated several long term shipping agreements and intends to use these arrangements as indicators of market support and financial justification for the TMX facilities expansion. We strongly feel that these long term arrangements must be vetted in an open and transparent manner by the NEB and exemptions should not be applicable.
- 4) The Tsleil-Waututh Nation seeks clarity on Kinder Morgan's use of the term "uncontrollable costs," including what anticipated costs are deemed "uncontrollable," and whether or not this can be further defined and accounted for within the tolling structure.
- 5) The Tsleil-Waututh Nation is concerned about financial incentives and discounted rates offered to specific shippers based on their commitments, and seeks clarity on whether these discounts divert funds that could otherwise be spent or reserved for safety costs, including emergency preparedness, emergency response, and environmental restoration.
- 6) In the tolling application, Kinder Morgan describes its Open Season process as binding, with the goal to obtain commitment, financial certainty, and "long-term (15 or 20 years) contractual certainty" for the shippers from Trans Mountain. However, Tsleil-Waututh would like to receive clarity on how this certainty can be achieved given that the expansion application has yet to be filed and granted government approval.

The Tsleil-Waututh Nation acknowledges the National Energy Board's (NEB's) Draft List of Issues, included in their letter of 20 August, 2012. Tsleil-Waututh further acknowledges the NEB's letter of 25 September, 2012 in which the NEB responded to a number of potential Intervenor's comments to the Draft List of Issues. The NEB deemed some comments beyond the scope of the Part IV Application. The Tsleil-Waututh Nation, however, is of the view that the following issues are relevant and should be tied to the Part IV Application, and therefore, lists them here as concerns. They are not to be interpreted as rationale for your determination of our status as Intervenor's but are offered for your information.

- 1) The Tsleil-Waututh Nation seeks assurances that the NEB will require Kinder Morgan, and any and all of its subsidiary corporations and limited partnerships, to carry insurance or post the necessary surety that will cover all costs relating to emergencies, including spills, seeps, ruptures, and explosions, and that this insurance will adequately cover

each stage of the recovery process, including emergency response, clean-up, remediation, long-term monitoring, and environmental rehabilitation.

- 2) Tsleil-Waututh seeks clarity on whether the tolling application adequately covers the cost of emergency preparedness. In response to the 2007 Kinder Morgan Trans Mountain Pipeline rupture, Kinder Morgan committed to developing an emergency preparedness plan with the Tsleil-Waututh Nation. Tsleil-Waututh urged the initiation of this plan on numerous occasions. Kinder Morgan has yet to honour this commitment. Burrard Inlet has suffered significant damage from oil-based activities, creating health concerns and preventing Tsleil-Waututh from exercising their Aboriginal rights to the sustainable harvesting of marine foods. In light of these historical and ongoing events, it is imperative that the tolling application include emergency preparedness costs and a requirement for Kinder Morgan to carry out an adequate emergency preparedness program.
- 3) Tsleil-Waututh seeks clarity on whether the tolls and tariffs in the tolling application account for long-term impacts to community health, including contamination of local food sources (such as marine foods, including but not limited to, shellfish), contamination of waterways, impacts to the environment on which community members draw their livelihood, and the subsequent impacts on Tsleil-Waututh culture and cultural protocol.
- 4) The Tsleil-Waututh Nation seeks clarity on the various names under which Kinder Morgan conducts business, including further details on their corporate ownership structure and implications for liability in the event of an accident or emergency along the Trans Mountain Pipeline route.

We respectfully request your favourable consideration of our application for Intervenor status.

Should you have any questions, please contact Evan Stewart at 778-231-7680 or via email at [estewart@twnation.ca](mailto:estewart@twnation.ca).

Sincerely,



Qut-same

Chief Justin George

CC: National Chief Shawn Atleo, Assembly of First Nations  
Grand Chief Stewart Phillip, Union of BC Indian Chiefs  
Regional Chief Jody Wilson-Raybould, BC Assembly of First Nations  
Honourable Joe Oliver, Minister of Natural Resources  
Kennedy Stewart, M.P. Burnaby-Douglas  
Honourable Rich Coleman, M.L.A., Minister of Energy, Mines and Natural Gas  
Mayor Derek Corrigan, Burnaby  
Mayor Gregor Robertson, Vancouver