

## VIA EMAIL SUBMISSION

June 30, 2022

Canada Energy Regulator  
Suite 210, 517 Tenth Avenue S.W.  
Calgary, Alberta T2R 0A8

**Attention: Mr. Dan Barghshoon, Technical Specialist, Regulatory Policy**

Dear Mr. Barghshoon:

**Re: Trans Mountain Pipeline ULC (“Trans Mountain”)  
Canadian Energy Regulator Onshore Pipeline Regulations (“OPR”) Review  
Response to Discussion Paper**

Trans Mountain is in receipt of the Canada Energy Regulator’s (“CER”) OPR Review Discussion Paper and is appreciative of the invitation to provide input as the CER undertakes this initial stage in its comprehensive review of the OPR. During this evaluation phase, the CER is looking to understand issues, develop regulatory tools responsive to the issues, and consider appropriate placement of the solution whether it be guidance or regulation.

Trans Mountain is familiar with the *Canadian Energy Regulator Act* (“CER Act”) as a proponent and an operator, through the construction of the Trans Mountain Expansion Project (“TMEP”), and through normal and abnormal operating conditions, such as the fall 2021 unprecedented flood event in BC that resulted in the longest precautionary shutdown in Trans Mountain’s nearly 70-year operating history. Trans Mountain provides its overarching comments and specific responses to the questions posed for the CER’s consideration.

### **Overview**

#### **1. Regulatory Process Efficiencies are Needed**

The current regulatory process has resulted in authorizations which have many conditions that apply over various construction spreads or areas, are interconnected with each other and with authorizations by other regulators. The conditions require detailed information, of which may change, as is normal during the development of projects. All conditions require acceptance or approval prior to construction or operations – a lengthy process, and where there is a change, which is invariably expected, the process of review for acceptability starts again. The consequences of this combined regulatory process are that pipeline costs and schedule are not predictable. Customers have experienced periods of discount over the last 10 years, and are subject to ever increasing tolls resulting from ever increasing requirements contrary to the CER’s strategic priority of enhancing global competitiveness.<sup>1</sup> There are several mechanisms available to the CER to help create process efficiencies while maintaining its high standard in assessment and adjudication processes, such as: more informal process, creation of service standards for all types of applications, expansion of the use of exemption orders to include a broader array of low-

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<sup>1</sup> CER [Our Strategic Plan](#)

risk activities, reliance on professional judgment within the company, less prescriptive requirements, clarity of the assessment process and criteria for decision making.

## **2. *The Existing Federal and Provincial Regulatory Regime is Robust***

The CER ought to consider the robust and interconnected federal and provincial regulatory framework, as well as the incorporation of many industry standards by legislation prior to contemplating new requirements in the OPR. Additionally, the CER should consider principles of best-placed regulator in consideration of new requirements. Incorporation of requirements for protection of heritage resources through the OPR, as an example, would duplicate requirements already addressed within provincial regimes, and create confusion as to which regulator has oversight and authority, and may result in duplicative and unnecessary requirements. While the processes are robust, there is much duplication between federal and provincial requirements. This creates challenges for proponents given that each component of construction must be approved at local, provincial and federal levels – all with differing standards and timelines, which results in escalation in pipeline costs.

## **3. *UNDRIP is the Framework for Indigenous Reconciliation***

The federal government adopted the *United Nations Declaration of the Rights of Indigenous Peoples* (“UNDRIP”) in June 2021, which provides a robust framework to advance Indigenous Reconciliation. Trans Mountain supports the government and the CER in this pursuit. Over the last number of years, the federal government and Indigenous communities have undertaken substantial work in the development of the Indigenous Advisory Monitoring Committee (“IAMC”) to provide Indigenous involvement and advice to the CER. As required by the CER Act, the CER has established an Indigenous Advisory Committee (“IAC”) for the purpose of enhancing the involvement of the Indigenous peoples of Canada.

Almost every project undertaken by Trans Mountain requires advance notice, or more generally, a requirement to engage those affected. Further prescribing requirements in the OPR is not necessary since Indigenous engagement requirements are relayed in the CER *Filing Manual*, and more generally in the OPR. Given this, the CER should consider whether the OPR does not require any specific changes in relation to Indigenous engagement or Reconciliation as these requirements are already incorporated in existing CER processes.

### **Response to Discussion Paper**

As requested, Trans Mountain offers feedback to each of the questions in the Discussion Paper, below.

#### **Section 1. OPR – Lessons Learned**

##### **1. What’s working well in relation to the OPR, and its implementation, and what could be improved?**

*The current OPR is robust and effective.* Trans Mountain appreciates the current performance-based approach that provides flexibility and scalability of solutions for compliance that is appropriate for the size and nature of the operation. In 2013 the OPR was revised to include an overlay of management system requirements that ensure discipline in program planning such as setting goals, identifying, evaluating, and mitigating hazards and risks, ensuring knowledge and understanding of legal requirements, requiring inspection and monitoring of program activities, and implementation of a quality assurance process. Management system requirements apply to all programs under the OPR. In Trans Mountain’s view, the OPR in its current form, is robust and effective in facilitating positive safety and environmental outcomes.

*Additional guidance for inspectors is recommended.* Through its current operation and the construction of the TMEP, Trans Mountain has been tested through numerous compliance verification activities. Trans Mountain has experienced a wide variety of inspection experiences and outcomes for similar conditions. The CER ought to explore whether there are standardized policies that can be put in place for inspection activities that address risk and judgment such that inspectors are consistent in their findings, considering risk and prior decisions. For example, Trans Mountain experienced temporary construction stand downs for damaging one bird egg of a non-endangered migratory bird, despite the robust protection processes which had been evaluated by the CER. Findings should be proportionate to the event and consistent from inspector to inspector.

*Risk-based approach is needed.* The CER should explore a risk-based approach that would consider other program areas under the management system in their application to a given site. For example, during the precautionary shut down of the Trans Mountain pipeline due to extreme flooding in the fall of 2021, Trans Mountain established an incident command structure and immediately prioritized integrity assessments, repairs and natural hazard remediation works necessary to resume a safe reduced-pressure restart of the Trans Mountain system. Near this time, CER staff submitted urgent formal inquiry to Trans Mountain requiring response to understand what public awareness activities have taken place in areas impacted by flooding, and to assess whether these activities are adequate. Trans Mountain encourages more coordination within the CER to ensure prioritization of the most critical issues first in the event of an emergency. Compliance verification activities and inquiry should be consistent with risk whether during emergency or normal conditions. Further, Trans Mountain encourages more informal discussion for issues with tight timelines, especially during times of emergency, rather than formal information requests.

## **Section 2. Reconciliation with Indigenous Peoples**

### **2. How can the OPR contribute to the advancement of Reconciliation with Indigenous Peoples?**

Trans Mountain embraces and has internalized the critical importance of Indigenous Reconciliation to ensure an awareness of the past, acknowledgement of the harm that has been inflicted on Indigenous people of Canada, atone for the causes, and act to change behaviour. In Trans Mountain's view, Reconciliation involves a deepened understanding of Indigenous history and colonization and the devastating impact this has had on Indigenous communities over generations, with the goal of healing within Indigenous communities, and restoring culture, language, governance and customs. Reconciliation also supports Indigenous communities in advancement of economy. The Reconciliation framework of the UNDRIP provides a principled approach in the development of these relationships. The preamble to the CER Act relays Canada's commitment to Reconciliation, commitment to the implementation of the UNDRIP, and in the importance of Indigenous knowledge in decision making. Trans Mountain has observed how this has guided CER assessment and adjudication processes, oversight and compliance verification activities since the enactment of the CER Act in 2019.

Almost every project undertaken by Trans Mountain requires an application to the CER that requires engagement with those affected. Further, the OPR requires the establishment of an

external communication process over the lifecycle of the pipeline, which would apply to all activities outside an application process.<sup>2</sup> Given this, the CER should consider whether the OPR does not require any specific changes in relation to Indigenous engagement or Reconciliation as these requirements are already incorporated in existing CER processes. Any changes to the OPR risks redundancy and inefficiency.

### **3. How can the OPR contribute to the protection of heritage resources on a pipeline right-of-way during construction, and operations and maintenance activities?**

The CER *Filing Manual* provides expectations regarding heritage resources alongside the provincial regulatory framework that governs the protection of heritage resources, i.e., *Heritage Resources Act* (of Alberta, Manitoba) and the *Heritage Conservation Act* (BC). Further, the UNDRIP has provisions for the recognition of and protection to lands.<sup>3</sup> As a part of environmental and socio-economic assessment, the *Filing Manual* requires companies to describe heritage resources, the potential for any undiscovered heritage resources, and correspondence from provincial or territorial authorities responsible for heritage resources.<sup>4</sup> Additionally, the CER has the authority to impose conditions on orders or certificates to provide the CER assurances that the company has obtained all required archeological and heritage resources clearances from the appropriate provincial authority prior to the commencement of construction. For example, in Certificate of Public Convenience and Necessity (“CPCN”) OC-065 for the TMEP, the CER imposed Condition 100 that requires Trans Mountain to file confirmation that it had all required archeological and heritage resource permits and clearances, description of how permit conditions will be met, and that environmental protection plans will include any relevant information for permit conditions and recommendations.<sup>5</sup> Accordingly, the protection of heritage resources on the pipeline right-of-way is adequately addressed through the provincial and federal framework and inclusion in the OPR would result in duplication of requirements.

### **4. How can the OPR contribute to the protection of traditional land and resource use, and sites of significance for Indigenous peoples on a pipeline right-of-way, during construction, and operations and maintenance activities?**

The *Filing Manual* requires consideration of traditional land and resource use and Indigenous Knowledge as a part of environmental and socio-economic assessment. It also requires companies to have policies and principles in place for collecting Indigenous knowledge through engagement.<sup>6</sup>

Further, the CER has the authority to impose conditions on orders or certificates to require traditional land and resource use investigation, reports on engagement by those impacted by the activities, and mitigation of impact. For example, in CPCN OC-065 for the TMEP, the CER imposed Condition 97 that requires Trans Mountain to submit traditional land use investigations which are to include descriptions, methods to identify, summary of mitigation measures, and a summary of consultations undertaken.<sup>7</sup> Additionally, the CER imposed several conditions

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<sup>2</sup> [OPR s.6.5\(1\)\(m\)](#)

<sup>3</sup> [UNDRIP Article 26](#)

<sup>4</sup> [CER Filing Manual](#) Guide A, Table A-3, PDF p.111

<sup>5</sup> [CPCN OC-065](#) Condition 100, PDF p.45

<sup>6</sup> [CER Filing Manual](#) Guide A

<sup>7</sup> [CPCN OC-065](#) Condition 97, PDF p.44

requiring consideration of traditional land use and Indigenous knowledge in development of all environmental protection plans, and numerous specific plans for elements such as caribou, species at risk, as well as hydrostatic test water withdrawal and discharge plans.<sup>8</sup>

Should the CER conclude that additional guidance is required to ensure the protection of traditional land and resource use and consideration of Indigenous knowledge, the CER may want to consider its inclusion in the *Filing Manual* and/or within the CER O&M Guidelines.

**5. How can the use of Indigenous knowledge be addressed in the OPR?**

Please see response to question 4, above.

**6. How can the OPR address the participation of Indigenous peoples in pipeline oversight?**

Trans Mountain applauds the efforts of the federal government in the creation of the IAMC to provide Indigenous involvement and advice to the CER in relation to the TMEP and the existing Trans Mountain system. Trans Mountain further supports the CER's creation of the IAC within the CER for the purpose of providing advice to the CER on matters such as Crown consultation and accommodation, protection and incorporation of Indigenous knowledge, enhancing cultural competency and advancing Indigenous recruitment. These programs serve as a solid foundation to promote growth in Indigenous Reconciliation within and outside of the CER.

To achieve efficiency and effectiveness there should only be one regulator. The CER has developed a model where Indigenous people participate in the decisions through monitoring, inspections and consultation. The IAMC and IAC provide invaluable advisory capacity to the CER in matters pertaining to Indigenous knowledge, traditional land use, rights and interest. Such process is critical to advancing Reconciliation and creating necessary cultural competency within the CER. Trans Mountain supports these efforts and suggests that the legislative responsibility for pipeline oversight resides with the CER for efficiency, clarity and effectiveness.

**Section 3. Engagement and Inclusive Participation**

**7. How can the OPR support collaborative interaction between companies and those who live and work near pipelines?**

Meaningful communication and engagement are critical to the success of the company's relationship with residents and communities. Early engagement helps companies understand the impact of their activities on communities and how to avoid or mitigate those impacts where practical. Engagement and communication are activities that Trans Mountain undertakes over the lifecycle of the pipeline and vary according to the nature and impact of the activity. As an example, construction activities (which would involve disturbance and nuisance and are longer in duration) would require more robust advance engagement and engagement throughout the activity, whereas pipeline monitoring and vegetation management activities (which would involve limited disturbance and are short in duration) would typically involve notification and require less ongoing engagement.

The *Filing Manual* provides guidance to proponents of the elements of engagement and

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<sup>8</sup> [CPCN OC-065](#) Conditions 37, 38, 40-44, 47, 56, 71-72, 75, 78, 81, 92, 113, 128, 132, 154-157

communication. The OPR requires companies to establish and implement a process for external communication of information relating to safety, security, and protection of the environment, and for the company to undertake an evaluation of the adequacy and effectiveness of the company's management system, including the process for external communication.<sup>9</sup>

Trans Mountain has had tremendous success in executing a robust engagement program for a wide variety of stakeholders with differing characteristics and needs, and across a wide variety of construction and operation activities. Trans Mountain is of the view that between the current requirements of the OPR and the guidance provided in the *Filing Manual*, the appropriate framework is in place. Companies can build on this framework based on experience and best practice, to promote collaborative interaction between stakeholders and pipeline companies. The current framework provides the latitude to structure engagement activities in a manner that is scalable to the size and extent of the activity. Trans Mountain offers that no changes are required.

**8. How could communication and engagement requirements in the OPR be improved?**

Please see response to question 7, above.

**9. How could the CER improve transparency through the OPR?**

Please see response to question 7, above.

**10. Gender and other intersecting identity factors may influence how people experience policies and initiatives. What should the CER consider with respect to:**

- a. Those people implementing the OPR; or
- b. Those people who are impacted by the operational activities addressed in the OPR?

Trans Mountain acknowledges the importance of understanding how groups of women, men and gender-diverse people may experience policies, programs and projects, as well as how other identity factors such as race, ethnicity, religion, age, or mental or physical ability can intersect to influence experiences. To contribute to an inclusive society where all Canadians can fully participate in all spheres of their lives, it is important to understand how projects and activities interface with diverse groups of individuals. Combined with engagement activities that include diverse populations, Gender-based Analysis Plus ("GBA+") is one type of analytical process in socio-economic assessment that serves to assess the potential impacts of projects on people of diverse gender identities and other intersectional identity factors. Trans Mountain supports a goal-oriented approach to socio-economic analysis in lieu of legislating prescriptive requirements in the OPR such as GBA+. Prescriptive requirements may generate results that may not benefit diverse communities or subpopulations. Further, requirements for assessments that consider gender and distinct human populations are also already found in legislation at the federal and provincials level related to impact assessments.<sup>10</sup> Instead, CER should consider guidance through the *Filing Manual* and through open dialogue with industry to continue to grow its understanding as the body of research and methodologies related to this topic continue to evolve.

<sup>9</sup> [CER Filing Manual](#) Chapter 3.4 PDF pp.33-38 and [OPR](#) s.6.5(1)(m) and (1)(v), respectively.

<sup>10</sup> Section 22(1)(s) of Canada's [Impact Assessment Act](#); Section 25(2)(d) of BC's [Environmental Assessment Act](#); Section 183(2)(c), 262(2)(c), 298(3)(c) of the [CER Act](#).

## Section 4. Global Competitiveness

### 11. How can the OPR support a predictable and timely regulatory system that contributes to Canada's global competitiveness?

Prior to the TMEP, Trans Mountain's last pipeline expansion, the TMX-Anchor Loop Project, involved the twinning of a 158 km of pipeline crossing Jasper National Park and Mount Robson Provincial Park, both designated part of the Canadian Rocky Mountain Parks, a United Nations Educational, Scientific, and Cultural Organization (UNESCO) World Heritage Site. This project traversed some of the most environmentally sensitive areas in Canada. The TMX-Anchor Loop Project was approved by Governor in Council and undertaken in accordance with CPCN OC-049 and subject to 19 conditions. It was completed in 2008 and was later awarded the Emerald Award, which recognizes and rewards excellent environmental initiatives.<sup>11</sup> The TMX-Anchor Loop Project has continued in safe operation since this time.

The TMEP, also subject to a robust and extensive regulatory assessment and adjudication process, was approved by Governor in Council and undertaken in accordance with CPCN OC-065, and subject to 156 conditions of increased complexity, and interconnectedness. These conditions impact a large number of construction spreads and areas, and in many cases are tied to other federal or provincial permitting processes. Many of these conditions are the result of commitments to undertake plans later in the development of the project and require either acceptance or approval of the CER. In Trans Mountain's experience this is an extensive and time-consuming process, and effectively a re-adjudication of a commitment that was already considered in the regulatory proceeding. Further, given the dynamic nature of projects, and constant evaluation and re-evaluation of potential hazards and adjustments to protection measures, plans are then appropriately adjusted. However, these plans may impact other conditions, which are also required to be re-filed with the CER, and again, create delays in approval prior to being implemented. The result of this process is an adverse impact on Trans Mountain's ability to construct projects on schedule and on budget which is particularly challenging to the creation of efficient regulation.

Trans Mountain encourages the CER to consider the adjudication and approval processes applied to the TMX-Anchor Loop Project, which was constructed and continues to operate in a manner that protects the safety and security of people and the environment. The TMX-Anchor Loop Project was also subject to a regulatory regime which was also robust, yet permits flexibility, professional judgment, and the ability to adjust plans expeditiously as needed and permit pipeline construction to proceed on schedule.

In addition to this, where the OPR, and more generally, the CER, can support predictable and timely outcomes are as follows:

- *Service standards for all types of applications.* The CER has time limits for processing infrastructure applications pursuant to sections 183, 214 or 262 of the CER Act, that consider the level of complexity of the type of project (minor, moderate, major).<sup>12</sup> Trans

<sup>11</sup> <https://www.transmountain.com/past-project-mount-robson-jasper-park-expansion>

<sup>12</sup> [CER Time Limits and Service Standards](#)

Mountain would like to see service standards extended to other types of projects that would be authorized under the OPR, for example decommissioning (s.45.1), deactivation and reactivation (s.44 and s.45, respectively), and projects authorized under the CER Act, for example, variance (s.69), leave to open (s.213) and abandonment (s.241). It is procedurally fair to the proponent to have visibility to the length of the assessment timeframe as the proponent has accountability to its owner for the purpose of planning and investment decisions, and to its customers in its ability to provide service.

- *Expand the use of the Exemption Orders.* Currently there are two exemption orders that allow a very limited suite of activities to proceed provided that conditions are met. Order [XG/XO-100-2012](#) allows for the installation of a new connection and associated line piping up to 60 m in length, metering and regulating facilities, or compressors or pumps, provided that certain criteria is met. Order [XG/XO-100-2008](#) allows for decommissioning activities that are routine in nature to proceed provided that certain criteria is met. Trans Mountain encourages the CER to consider other lower-risk activities that could suitably take place under these authorizations, and whether installation of *all* line piping, beyond 60 m, within fence line, which would likely to be of equally low risk to line piping *up to* 60 m, should also be considered. Considering a risk-based approach to streamlining would allow for a larger suite of low-risk activities to proceed expeditiously, while creating capacity within CER to focus on assessment and adjudication processes for applications that carry greater risk.
- *Predictability of assessment process and decision making.* Clear process steps are required for various types of decisions, standardized information needs across same types of projects, and relayed criteria for acceptability.
- *Consideration of timelines for completeness decisions.* Currently the CER assigns timelines for the assessment of s.214 and s.183 applications, but those timelines commence when the CER has completed its evaluation of completeness of the application and a letter is issued to the proponent. There are no timelines assigned for this first step, and it can add a month or more to the timelines provided to the CER. Wherever the CER can provide certainty of time and process is essential in creating transparency to all participants.
- *Consideration of professional accountability in lieu of CER acceptance.* In many cases, a condition filing is technical in nature and requires sign off by a Trans Mountain representative that may have a professional designation that requires certain assurances to be made, i.e., registered professional biologist or professional engineer. Considering that the CER has the power to verify compliance at any time, the CER ought to consider such attestations in lieu of what may be a lengthy CER acceptance process.

## **12. How can the OPR support innovation, and the development and use of new technologies or best practices?**

Where the CER can support innovation and the development and use of new technologies and best practices is to work with industry to ensure that where regulatory process is required, the process and information needs are transparent and commensurate with project risk. The CER should be in a position of readiness to accept applications for sustainable projects, and where



necessary, adjudicate in a timely manner.

**13. What company-specific or industry-wide performance metrics could the CER consider to support enhanced oversight and transparency for CER-regulated facilities?**

Performance metrics are an efficient way to gather a large quantity of information across industry. However, companies may have different levels of conservatism in reporting, which may create the perception of disproportionate risk between pipelines, and/or create combined metrics that are not necessarily scalable across industry. The CER should consider whether the data requested is properly placed as a metric, and whether such information should better be discussed via information exchange such that the CER has full visibility to, for example, how quantitative risk scores are calculated, how hazards are managed, within the context of the management system and program requirements.

**14. Are there opportunities within the OPR for data and digital innovation that could be used by the CER and by companies regulated by the CER?**

Trans Mountain understands that public availability of information is important in a transparent regulatory system. However, not all information submitted by pipeline companies should be made publicly available as misinterpretation or misuse of that information could lead to potential for material loss, harm or prejudice.

For example, in relation to its Financial Resources Plan that is submitted to the CER annually, Trans Mountain is required to submit details of its financial resources, including the types and terms and how the financial resources allow a company to pay the amount of applicable absolute liability. For Trans Mountain, it funds a portion of this through insurance, and under the *Pipeline Financial Requirements Guideline*, Trans Mountain is required to disclose the names of its insurers. Following the submission of Trans Mountain's 2020 report, there was a targeted campaign applying pressure to insurers to stop insuring Trans Mountain. This resulted in the termination of coverage, which was subsequently replaced albeit at a higher cost.

CER Act s.60 offers an alternative test, that if satisfied in whole or in part, would permit the Commission or designate to grant confidentiality of the information. Trans Mountain applied for and was granted relief under both parts of s.60 to keep insurer identities confidential; however, this process took in excess of two months, involved a public comment process resulting in a total of 30 comment letters filed, and the decision rendered less than 1 day before Trans Mountain's Financial Resources Plan was due to the CER.<sup>13</sup>

The CER has authority to protect information of this nature from public disclosure without testing on a case-by-case basis whether the test for confidentiality is met. For example in CER Order [MO-006-2016](#) compelling publication of emergency procedures manuals, Condition 1(a) permits companies to protect from publication information about individuals, information that if disclosed would result in a real and substantial risk of impairment to the security of pipelines, information that could result in a material loss or gain to a person, information specific to the location of species at risk and heritage resources, and information about daycares, schools or hospitals.<sup>14</sup>

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<sup>13</sup> [Letter Decision](#) dated April 29, 2021.

The CER should consider a standardized approach similar to that in Order MO-006-2016 for information that if disclosed, would pose a risk to the security of pipelines, safety or well-being of persons, or a material loss to the pipeline, in lieu of the burdensome and time-consuming process under s.60 of the CER Act.

#### **15. How can the OPR be improved to address changing pipeline use and pipeline status?**

OPR s.1 defines “abandon” to permanently cease operation such that the cessation results in the discontinuance of service, and “decommission” to permanently cease operation such that the cessation does not result in the discontinuance of service. In the preamble to this question in the OPR discussion paper, the CER states:

*When a company plans to end the operation of a pipeline, or part of one, but it is located in the footprint of pipelines and facilities that continue to operate, such that all remediation and reclamation cannot be completed at that time, the company may submit an application to decommission the pipeline and take it out of use.<sup>15</sup>*

In this statement, the CER is also presenting the demarcation between abandonment and decommission to be whether remediation and reclamation can be completed, which is different than whether service is continued (decommission) and service is discontinued (abandoned) as stated in the statute. The CER should explore development and publication of clear guidance on this topic. Trans Mountain also supports the continued use of the decommissioning exemption order to allow smaller-scale and lower risk decommissioning projects to proceed, subject to conditions of the order being met.

### **Section 5. Safety and Environmental Protection**

#### **16. What further clarification, in either the OPR (e.g. structure or content), or in guidance, would support company interpretation and implementation or management system requirements?**

In addition to the OPR, CER has developed a large body of guidance that informs and clarifies how the OPR program and management system requirements are to be interpreted and implemented:

- [OPR Guidance Notes](#) provide interested parties with information about what the goal of the particular regulatory requirement is and what the expectations are in obtaining that goal;
- [CER Management System Audit Guide](#) describe how OPR regulations are applied in a management system context; and
- [CER Management System and Protection Program Audit Protocols](#) describe what the CER considers to be a compliant outcome.

This is a large body of information available to industry that serves to deepen understanding of management system requirements and how those requirements overlay OPR programs. The OPR, combined with this guidance, is scalable to the size and nature of operation and the stage within the pipeline lifecycle. Further content or structure within the OPR may result in prescriptive

<sup>15</sup> OPR [Discussion Paper](#), PDF p.8

requirements which would deviate from goal-oriented requirements or may be unnecessary or conflict with existing regulatory objectives. The current OPR, supported by guidance and protocols, is adequate in ensuring positive environmental protection and safety outcomes, and does not warrant further clarification.

**17. How should information about human and organizational factors, including how they can be integrated into a company's management system, for both employees and contractors, be provided in the OPR, and/or discussed in related guidance?**

One of the many management system processes required by the OPR is the establishment and implementation of a process for the internal reporting of hazards and potential hazards, incidents and near-misses and for taking corrective and preventative actions, including the steps to manage imminent hazards.<sup>16</sup> Trans Mountain reviews its hazards and potential hazards continually, and this is inclusive of human and organizational factors, such as worker fatigue and training.

The CER has advanced knowledge and understanding of safety culture, inclusive of human and organizational factors and risk informed approaches. The CER has facilitated workshops to promote industry-wide sharing and learnings. Industry standards continue to mature and evolve, some of which are incorporated into regulation via OPR s.4(1), while others serve as guidance (i.e., forthcoming CSA Express Document on human and organizational factors). Between the management system requirements of the OPR, industry standards that are incorporated by reference, human and organization factors are already appropriately accounted for in the OPR, and additional requirements in the OPR or guidance is not required.

**18. How can the OPR improve the connection between company safety manuals and the overarching Safety Management Program, for both employees and contractors?**

Safety manuals are a product of the Safety Management Program required under OPR s.47. Safety manuals, both at a program and a field level are reviewed annually for their effectiveness pursuant to OPR s.6.5(1)(w). Under its *Canada Labour Code Part II* mandate, Trans Mountain has established a health and safety committee to review standards for their effectiveness.<sup>17</sup> Further, under the management system requirements of the OPR, the CER requires companies to have a line of sight to all employees and contractors doing work on behalf of the company.<sup>18</sup> The current framework ensures that there is a connection between a company's safety management program and safety manuals, that they are reviewed for their effectiveness, and are applicable to employees and contractors.

In addition to this legislative framework, the CER has the power to impose conditions on orders and certificates to ensure that safety plans are developed and submitted. For example, CPCN OC-065 for the TMEP imposed Condition 64 that requires safety management plans (produced by Trans Mountain) and safety manuals (or project-specific safety plans, which are produced by the general contractor for specific construction spreads), to be submitted to the CER, prior to the commencement of construction.<sup>19</sup>

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<sup>16</sup> [OPR s.6.5\(1\)\(r\)](#)

<sup>17</sup> [Canada Labour Code Part II](#), s.136

<sup>18</sup> [OPR s.6.5\(1\)\(j\)-\(l\)](#), (q)

<sup>19</sup> [CPCN OC-065](#) Condition 64, PDF pp.31-22

For these reasons, the connection between safety manuals and the overarching Safety Management Program in the OPR is clear, and the expectation for their application to both employees and contractors is clear, and no further changes to the OPR are required.

### **19. How can respect and personal workplace safety be assured at CER regulated sites?**

Trans Mountain is deeply supportive of the CER in its efforts to ensure its inspection officers, Indigenous monitors and members of the IAMC are treated respectfully and are free from discrimination and harassment while conducting work on CER-regulated infrastructure.

Trans Mountain was pleased to see the *Work Place Harassment and Violence Prevention Regulations* come into force in 2021 and has implemented this new legislation for its employees. *Canada Labour Code Part II*, under which this legislation was enacted, gives the CER authority to enforce it. When properly implemented, this regulation has the necessary measures to protect against and prevent workplace harassment and discrimination. As such, Trans Mountain is of the view that both the legislative framework and regulatory oversight measures are in place to assure respect and personal workplace safety at CER-regulated sites.

### **20. How should the CER be more explicit about requirements for contractor management?**

The OPR has explicit requirements for contracting services in relation to the construction of the pipeline. OPR s.18 requires the pipeline to inform the contractor of all special conditions associated with construction (a), all safety practices and procedures necessitated by the conditions of features specific to the construction (b), to inform the contractor of the responsibilities (b.1), to take all reasonable steps to ensure that construction activities are conducted in accordance with the construction safety manual under OPR s. 20(c), and authorize a person to halt construction in circumstances where, in the person's judgment, the construction is not be conducted in accordance with the construction safety manual.

Further, there are explicit management system processes in relation to employees and contractors that overlay the construction safety requirements of the OPR and apply over the lifecycle of the pipeline. Regulated companies are required to develop competency requirements and training to ensure employees and other persons working on behalf of the company to perform their duties in a manner that is safe, establish and implement a process to verify that those persons are trained and competent, ensuring they are aware of their responsibilities, and that their activities are coordinated and controlled – all in a manner that ensures the safety and security of the pipeline and protects the environment.<sup>20</sup> The OPR already has explicit requirements for contractor management, and no changes are required.

### **21. How should the OPR include more explicit requirements for process safety?**

The management system processes in the OPR require companies to identify and analyze all hazards, maintain an inventory, establish a process for evaluating the risks associated with identified hazards and potential hazards, and a develop a process for developing and implementing controls to prevent, manage and mitigate the identified hazards and potential hazards.<sup>21</sup> Further OPR s.4(1) requires companies to design, construct, operate or abandon a

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<sup>20</sup> [OPR s.6.5\(1\)\(j\)-\(l\), \(q\)](#)

<sup>21</sup> [OPR s.6.5\(1\)\(c\)-\(f\)](#)

pipeline in accordance with the several CSA standards, including CSA Z662.

Should there be consideration of more explicit requirement for process safety, the CER should consider this through industry standard. Further, consensus standards are revised on a set schedule to account for technological improvements and/or increased risks. For these reasons, the OPR has sufficient explicit requirements for process safety.

**22. How can the OPR drive further improvement to the environmental performance of regulated companies?**

OPR s.48 requires companies to develop, implement and maintain an environmental protection program that anticipates, prevents, manages and mitigates conditions that could adversely affect the environment. For every program, including the environmental protection program, the management system processes require companies to implement a process for setting the objectives and specific targets to achieve established goals and develop metrics for evaluating the company's success in achieving its goals, objectives and targets.<sup>22</sup> Companies are also required to establish and implement a process for evaluating the adequacy and effectiveness of the company's management system in meeting its obligations under the regulations.<sup>23</sup> Collectively, these sections require companies to develop and implement the program, evaluate it for its effectiveness against predetermined criteria, and undertake changes where necessary to ensure that goals are met. As such, the current OPR has in place mechanisms to facilitate positive environmental outcomes, and no further changes are required.

**23. How can the connection between the Environmental Protection Plan, specific to an individual pipeline, and the company's Environmental Protection Program, designed for a company's pipeline system, be improved?**

Environmental protection plans ("EPPs") are a product of the Environmental Protection Program. In addition to the OPR, Trans Mountain refers to many other federal and provincial regulatory requirements in the development of its EPPs and observes that many of the specific environmental protection requirements reside within provincial regulations. EPPs are developed for a variety of construction and operational projects, and the flexibility offered by the current OPR allows industry to develop EPPs that are fit-for-purpose, scalable, and serve to avoid and/or mitigate adverse environmental outcomes specific to the site and activity.

In addition, the CER has the power to impose conditions on projects requiring a company to develop and submit EPPs, and any specific considerations. For example, CPCN OC-065 for the TMEP imposed Conditions 72, 78 and 81 which require site-specific EPPs to be submitted to the CER and approved, prior to commencing construction.<sup>24</sup>

The current regulatory regime is robust in that it requires methodical development and evaluation of an environmental protection program under the program and management system requirements of the OPR. The regime is also flexible in that it provides the company latitude in the development of EPPs that are appropriate for the site and the size and nature of the activity for the purpose of advancing positive environmental outcomes. The connection between the

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<sup>22</sup> [OPR s.6.5\(1\)\(a\),\(b\)](#)

<sup>23</sup> [OPR s.6.5\(1\)\(v\)](#)

<sup>24</sup> [CPCN OC-065](#) Conditions 72, 78, 81, PDF pp.34, 37, 81

EPPs and the environmental protection program is robust and flexible, and no changes are required.

**24. How can contaminated site management requirements be further clarified, in the OPR or in guidance?**

In Trans Mountain's view, the Remediation Process Guide ("RPG") provides practical and flexible requirements for notification, environmental site assessments, remedial action, risk management and closure. In Trans Mountain's view, the guidelines within the RPG serve to encourage positive environmental outcomes without being too prescriptive in nature, and no changes are required.

**25. Are there any matters related to the Emergency Management Program in the OPR that require clarification? If so, what are they? Are there any matters for which further guidance is required?**

OPR s.32 requires companies to have an emergency management program and to develop a procedures manual. OPR s.33 requires companies to establish and maintain liaison with agencies that may be involved in emergency response, and s.34 requires the company to inform all persons who may be associated with an emergency response activity of the practices and procedures followed. Under OPR s.4(1), companies are required to follow CSA Z662, which requires companies to prepare an emergency response plan and references CSA Z246.2 *Emergency Preparedness and Response for Petroleum and Natural Gas Industry Systems* as guidance in the development of plans.<sup>25</sup> Finally, the emergency management program is subject to the management system requirements of the OPR, which require the development of objectives and targets, performance measures, and an evaluation of the effectiveness of the program.<sup>26</sup> This regulatory structure permits companies to build their emergency management program in a manner that anticipates, manages and mitigates conditions during an emergency which is commensurate with the nature and size of the pipeline operation, and the proximity and nature of communities and environmental features. For these reasons, no further clarification or guidance is required.

**26. How could the requirement for a Quality Assurance Program be improved or clarified in the OPR?**

The CER has substantially advanced its work over recent years in relation to materials quality assurance, by releasing the *Recommendations to Improve Quality Assurance Quenched and Tempered Pipeline Fittings - White Paper, August 2018* with recommendations for improvements to quality assurance processes and programs, and participating in the development of the CSA *EXP 13:21 Quality Assurance Requirements for Pipe and Components*. These tools are helpful in implementing a quality assurance program to ensure pipe and components meet specifications, as required by OPR s.15. How companies develop their quality assurance requirements depend on the nature of the activity. For example, for the construction or expansion of a system, the quality assurance process may be developed specific for the mass purchase of material, and in cooperation with the manufacturer. However, for more routine operations and maintenance activities, the company may purchase through a distributor whose quality assurance processes

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<sup>25</sup> CSA Z662-19, s.10.5.2.3

<sup>26</sup> [OPR](#) s.6.5(1)(a),(b),(v)

meet the pipeline company's minimum requirements. These are two examples of where quality assurance processes may differ within one company. The outcome-based approach in the OPR and the availability of guidance in developing quality assurance plans, are adequate and flexible. No further improvements or clarifications are needed in the OPR.

**27. How can the OPR incorporate the key issues identified in the Safety Advisory regarding the strength of steel and the relative strength of the weld area?**

The 2023 draft of CSA Z662 includes a new provision in the joining program that details the requirements for engineering assessments in the evaluation of welding procedure and certain considerations for this circumstance – which is the issue that *Safety Advisory 2020-01: Girth Weld Area Strain-Induced Failures: Pipeline Design, Construction, and Operation* identifies. As the actions under this safety advisory are in the process of being appropriately placed within CSA Z662, which is incorporated into the OPR through s.4(1)(d), there are no further steps required to incorporate this advisory.

**Section 6. Implementation Objectives**

**28. What are your recommendations for compliance promotion at the CER?**

Trans Mountain has been appreciative of the increased outreach of CER staff to industry to introduce new requirements, such as engagement on the OPR Discussion Paper and the *Filing Manual* changes and encourages the CER to continue with industry conversation on new or changing requirements. Trans Mountain supports the development of guidance and supports further conversation with industry in the development of that guidance. Clear guidance is often the key to successful implementation of a regulatory requirement. Further, the CER could improve compliance by engaging in more informal conversations with regulated companies, as opposed to structured and formalized compliance verification activities.

Lastly, the CER could also improve compliance by focusing its attention on higher-risk activities, as opposed to pursuing all issues with equal effort, which may cause less emphasis on higher-risk activities.

**29. How do you want to be engaged by the CER in the development of technical guidance?**

Technical requirements and guidance are a critical part of the regulatory framework to facilitate the safe construction and operation of pipelines. Trans Mountain acknowledges the very significant role of standards associations in the development of consensus standards such as the CSA, the American Petroleum Institute, and the National Research Council of Canada. Through the regulatory framework, these standards are incorporated via the OPR s.4(1) or in some cases, through the *Canadian Occupational Health and Safety Regulation* via *Canada Labour Code* Part II.

Industry standards are developed by consensus through committees comprised of technical subject matter experts, regulators, pipelines, manufacturers, and industry association staff. Membership brings both a broad and deep level of expertise in the development and revision of standards. Given the nature of this process, and the expertise within the standards association, the CER ought to defer to the industry associations, in which the CER often participates, for engagement on technical guidance.

Further, considering mapping of broader CER requirements to the specific technical requirements in CSA through incorporation in OPR s.4(1), the CER should consider whether placement of technical requirements in the OPR is appropriate. For example, OPR s.38 has specific requirements for welding on a liquid-filled pipeline with a carbon equivalent of 0.50% or greater. This is a technical requirement, which is also a requirement of CSA Z662-19, s.7.2.7. As CSA Z662-19 is incorporated via OPR s.4(1), this is a duplicate requirement. Further, as CSA Z662 is reviewed, revised and re-issued every four years, there is an established process and frequency under which the requirement is evaluated. For this reason, Trans Mountain recommends that technical requirements currently in the OPR should be located in the referenced industry standard and removed from the OPR.

**Closing**

Trans Mountain acknowledges the careful consideration and thoughtful questions of the CER in the OPR Discussion Paper and appreciates the opportunity to provide feedback. Considering the complexity of issues, Trans Mountain welcomes the opportunity to meet and discuss further. Should you have any questions or wish to discuss, please contact [REDACTED] Regulatory Affairs & Policy Manager at [REDACTED] or [REDACTED].  
Yours truly,

[REDACTED]

[REDACTED]

Vice President, Regulatory and Compliance  
Trans Mountain Canada Inc.