

Hearing Order OH-001-2014

Trans Mountain Pipeline ULC (Trans Mountain)

Application for the Trans Mountain Expansion Project (Project)

Evidence of Unifor

May 27, 2015

1. This evidence is presented Ms. Joie Warnock, Western Director for Unifor.
2. In the energy sector, Unifor represents about twelve thousand members employed in oil and gas exploration, transportation, refining and conversion in the petrochemical and plastics sectors. In respect of the Trans Mountain Expansion Project (“TMX”), Unifor members work in production and refining facilities in Alberta that produce the bitumen and oil products that would be transported on the Pipeline. Unifor members also work in refining and oil handling facilities in British Columbia that would receive energy goods transported on the Pipeline. The jobs and economic interests of these Unifor members would be directly affected by the Project.
3. In the fisheries sector, Unifor represents over 5,000 fisheries workers on both the East and the West coasts of Canada, and on Lake Erie. On the west coast, Unifor members rely on healthy fish stocks and fish habitat in their region. The jobs and communities of these members would be directly affected by both terrestrial and marine oil spills arising from, or in consequence of, the TMX Project
4. Unifor supports the regulated, sustainable development of the oil sands. A well-managed petroleum industry can provide stable, good jobs, and create wealth for producing communities and all Canadians. However for reasons I describe in

- some detail below, Unifor opposes approval of the TMX Pipeline because it will
- i) undermine investment in a value-added, diversified and a more stable oil and gas sector, ii) pose very serious risks to the BC commercial fishery and to the livelihoods of those who depend upon it, and iii) is proposed in the absence of a realistic and enforceable policy framework for the regulation of greenhouse gas emissions from the petroleum industry.
5. I also need to register Unifor's very serious concern about the decision of this Panel to condone the failure of Kinder Morgan (and the Trans Mountain companies it controls) to consider the potential adverse impacts of TMX on domestic processing and refining activities, going so far as to rule that assessing the relationship between oil pipeline export capacity and domestic Canadian investment in bitumen upgrading is beyond the scope of this hearing. Not only is such a decision impossible to reconcile with the public interest mandate of the National Energy Board, but it is entirely at odds with the recognition by the this Board in previous hearings of the validity of considering impacts of regulatory decisions on value-added production.
 6. The Board's mandate and obligations to consider the impacts of a pipeline project on workers and commercial interests that may be adversely affected, will soon be determined by the Federal Court of Appeal in appeals of the approval of the Northern Gateway pipeline project launched by Unifor, several First Nations, and two environmental groups. In the face of these appeals, the decision of this Panel to retreat from the willingness of previous Panels to at least consider such impacts, is indefensible.

The TMX Project

7. The Kinder Morgan Trans Mountain pipeline system (TMPL system) currently has an operating capacity of 300,000 bbl/d and transports crude oil and petroleum products from Western Canada to locations in central and southwestern British Columbia (BC), Washington State and offshore.

8. The Trans Mountain Expansion Project (TMX) will nearly triple the capacity of the TMPL system to 890,000 bbl/d. As described by TMPL, the expanded TMX will primarily transport diluted bitumen to export markets.
9. In presenting the economic rationale for the project, great emphasis is placed on expanding markets for Canada bitumen in Asia, and in particular in China. These markets are mentioned repeatedly throughout the evidence of Steven J. Kelly, of IHS Global Canada Limited, Kinder Morgan's primary expert on the business case for TMX. Mr. Kelly discusses China's growing investment interests in the oil sands, ventures that he expects will support the expansion of domestic bitumen upgrading and refining capacity in China.

Exporting Jobs

10. As is well known, the development of oil sands resources is undergoing unprecedented and rapid expansion. According to some forecasts, oil sands production in Alberta is to triple by 2035 over 2010 levels (although these forecasts will need to be adjusted in light of the impact of lower oil prices on new bitumen projects). This development has in turn prompted a number of pipeline projects to process and transport this increased flow of bitumen and oil products from western Canada to some domestic, but primarily international markets.
11. These developments represent a major restructuring of both Canadian and US oil and gas infrastructure, with the very large majority of Canadian oil sands production being destined for export markets. The pace and scale of these projected developments is incompatible with even the most conservative notions of sustainable development, and have the potential to cause profound damage to the environment and economy of Canada.
12. Unifor is also particularly concerned about the development model for this expansion of Canada's oil and gas sector that in the absence of a national energy strategy for our country, simply reflects the priorities of large energy companies, mostly foreign owned and controlled. According to industry plans an ever growing proportion of unprocessed bitumen will be exported to foreign markets, which means

that Canada will forego the enormous economic and employment benefits of adding value to Canadian resources through upgrading, refining, and secondary manufacturing.

13. Unifor and its predecessor unions have raised these concerns in regard to several recent pipeline proposals, including most recently in respect of the Northern Gateway pipeline project. TMX is just one of several pipeline projects primarily intended to facilitate the export of bitumen for upgrading and refining in other countries. The result undermines the full-cycle value which Canadians are able to derive from the natural resources they own, leaves us dangerously dependent on oil sands extraction, and ignores the environmental and social impacts of this unbalanced development model.

Threatening Supply to Canadian Refineries

14. Not only does the bitumen export model undermine investment in value-added production over the long term, it actually threatens the security of supply to existing Canadian refineries. In fact the preoccupation of the industry and this Board with the development of export markets provides no assurance that TMX will even serve the needs of the only remaining refinery operating in the lower mainland of B C. That worrying prospect emerges all too clearly from the manner in which Board has dealt with efforts by Chevron, the operator of the Burnaby refinery, to secure a sufficient supply of oil from the current Trans Mountain Pipeline to keep the refinery running at capacity.
15. The Burnaby refinery has been reliant on the TMPL since it began operations in the early 1950s, but competition from refineries operating on the northwestern US for discounted oil supplies from Western Canada has often left the Chevron facility squeezed out of the market for the supply it needs.
16. The cause of the problem isn't that Chevron is unwilling to bid competitively for TMPL supply. Rather, it arises from a pipeline tariff scheme approved by the Board, that allows larger US refiners to "game" the system to maximize their own access to supply, and in so doing limit Chevron's ability to guarantee the supply it needs.

Confounding any notion of fairness, the Board-approved tariff scheme actually puts the Canadian refinery at a competitive disadvantage relative to the US refiners. Moreover, the manner in which the Board has addressed the proposed tariff for TMX, including by isolating that issue from the current hearing, provides no confidence that even an expanded TMP pipeline would meet the needs of BC consumers.

The Economics of Value-Added Production in the Petroleum Sector

17. Canada is blessed with an abundance of non-renewable mineral wealth, including vast petroleum reserves (estimated as being the second-largest of any country in the world). The extraction and processing of those resources, if done in an environmentally and socially responsible manner, offer great potential opportunity for Canadians in all parts of the country.
18. However, to maximize the potential benefits of this resource, and minimize the negative side-effects, requires an active policy and regulatory context to guide the decisions of producing firms in more beneficial directions. This is true of requirements to minimize adverse environmental and social effects from petroleum developments. It is also true of the manner in which the economic effects of petroleum production are managed, a task which should aim to generate maximum benefits for Canadians in terms of employment opportunities, incomes, royalty revenue, technological spin-offs, export revenues, and other broader economic effects.
19. The extraction of petroleum constitutes just one link in a long chain of value-added activity, in which GDP is created in a range of functions related to the discovery, production, transportation, processing, and ultimate use of petroleum. The various sub-sectors which all contribute to Canada's employment and GDP outcomes, related to the extraction of the resource, include: exploration and development, other petroleum services, petroleum-related construction, extraction, transportation, upgrading and refining, secondary manufacturing of petroleum products, wholesale distribution, and retail sale. Of all the workers employed in this long value-added chain, only a minority work in the actual task

of extraction; most are employed in other related activities and functions. And hence most of the GDP produced through that entire chain of activity is produced in sectors other than extraction (once appropriate adjustment is made to GDP statistics to reflect the exhaustion of non-renewable natural capital through the extraction of petroleum).

20. It is thus a matter of primary economic importance to ensure that the extraction of the non-renewable resource translates into as much overall activity, employment, and income as possible. This is especially true during times of widespread unemployment and underutilization of productive inputs (as has prevailed in Canada as a whole for several years, and as now prevail even in Alberta). Moreover, some aspects of the petroleum value-added chain are typified by uniquely high-productivity, innovation-intensive, and well-paying jobs, which offer more income possibilities and other economic benefits than typical jobs. These include specialized functions in exploration and development, petroleum services, construction, and refining and processing jobs.
21. For example, the average worker in Canada's refining and processing industry produces about \$300,000 worth of value-added in the course of a year's work – well over three times the Canadian average. Average incomes are twice as high. The refining and upgrading sector is technology-intensive, generating skills and capacities that are transferable to other high-value occupations. For all of these reasons, there are broad social and economic benefits from sustaining Canada's refining industry.
22. However, left solely to the decisions of private firms, there is no guarantee at all that Canada's refining sector will benefit from the surge in raw extraction of bitumen. To the contrary, real GDP in this sector has actually declined in Canada since the take-off of the global commodities boom in the early 2000s. Over half of Canada's refineries have been closed since the 1980s (the most recent victims being refineries in Montreal and Dartmouth). Others (including the Chevron refinery in Burnaby) face uncertain futures, in the face of policy neglect, and the

side-effects of an all-encompassing effort to extract and export as much raw bitumen as possible, as quickly as possible. Ncredibly, in 2014 Canada actually became a net importer of refined petroleum products: with imports of product now more than offsetting our own exports. This is a shocking indicator of the extent to which Canadian policy-makers (including this Board) have abandoned their responsibility to maximize the potential value-added spin-offs from the production of our own non-renewable resources.

23. In simple terms, TMX will exacerbate problems that have already created an unfavourable market for Canadian upgrading and refining in Alberta and Eastern Canada. This project will add to the momentum of an energy strategy premised almost exclusively on the extraction and export of unprocessed bitumen. It will further undermine the prospects for sustaining and expanding Canada's already-challenged capacities in upgrading and refining. It could contribute directly to the future loss of additional refining capacity.

Jobs, Value-added Production and the Board's Public Interest Mandate

24. Unfortunately even before receiving the evidence of interveners, and in a sharp departure from its approach in previous hearings, this Panel has determined that even the consideration of potential adverse impacts of TMX on job creation, Canadian energy security, and diversification of the oil and gas sector – is beyond its mandate.

25. Thus during the first round of information requests, Unifor posed the following simple questions to TMPL:

- i. Would TMPL agree that it is in the broader public interest to ensure that Canadians receive the highest possible value for the non-renewable natural resources they own? If not, why not?
- ii. Would TMPL agree that increasing the number of people employed in the oil and gas sector is important to achieving that highest value? If not, why not?

- iii. Would TMPL agree that enhancing employment in Canada is valid public interest that it is in public interest to enhance employment
 - iv. Would TMPL agree that it is in the public interest for Canada to have a diversified Canadian oil and gas sector in which Canadian bitumen and oil resources are upgraded and processed? If not, why not?
 - v. Would TMPL agree that it is the public interest for Canadians to have the security of being able, where possible, to meet their own energy service needs with respect to oil products, without having to rely on foreign imports? If not, why not?
 - vi. Please explain the relationship between oil pipeline export capacity and domestic Canadian investment in bitumen upgrading?
 - vii. Please indicate whether the need for condensate to dilute and export bitumen may impact the availability of condensate needed by the Canadian Petrochemical industry?
 - viii. Please explain how capital investment in China and the U.S., which will be needed to enhance upgrading and refining capacity in those jurisdictions to process diluted bitumen, [which is one of the benefits TMPL has touted for the project] will be in the Canadian public interest?
26. Instead of answering questions (i) – (v) with the simple and direct responses the questions obviously call for, TMP referred Unifor to answers given in response to IRs posed by another intervener.¹ Those responses do not in any way answer the questions posed by Unifor and represent no more than evasions.
27. Even more problematic was its responses to questions (vi) to (viii) which was simply that: “The information request is not relevant to one or more of the issues identified in the National Energy Board’s List of Issues for the Trans Mountain Expansion Project.”

¹ Allan R IR No. 1.01a and 1.01h.

28. When Unifor filed a motion for order compelling TMPL to answer its questions, and Board dismissed our motion².

29. In other words, the Panel simply excused TMPL from having to address job creation, energy security or industry diversification as valid public interest concerns. Even worse, this Panel ruled that the impact of the pipeline on Canadian refineries is beyond its mandate, a decision entirely at odds with the Boards previous acknowledgement that impacts on commercial third parties is entirely relevant to the public interest test is must administer.

30. For example in the Alliance Pipeline case the Board acknowledged the importance of considering the potential for commercial impacts on persons other than the owners and users of the pipeline:

*A large-scale project such as that proposed by Alliance inevitably raises the potential for commercial impacts on persons other than the owners and users of the pipeline. Paragraph 52(e) [public interest] of the NEB Act enables the Board to consider these potential impacts in its overall assessment of whether the applied-for project is in the public convenience and necessity. Other aspects considered under this paragraph include environmental protection, socio-economic impacts, and public safety. [emphasis added]*³

31. Similarly in the Keystone XL hearing, the Board explicitly acknowledged the relevance of the potential impacts of a pipeline project on the Canadian bitumen and oil processing industry, noting that:

² Ruling 33 in response to IRs.

³ Sumas Energy 2, Inc., EH-1-2000, March 2004, at p. 11

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In final argument, the CEP and AFL expressed concern that shipping raw bitumen by pipeline to the U.S. has an impact on domestic investment in upgraders and refineries in Alberta and Canada. The Board accepts these perspectives as valid public interest considerations.⁴

32. Apart from the lawfulness of so clearly failing to exercise its public interest mandate, the Panel is seriously undermining public confidence in any approvals it may give, and that is true both for those in Canada that may have to live with the impacts of its decision, but for many in foreign markets as well - as the current imbroglio concerning the Keystone XL pipeline clearly illustrates. When the Board gives short shrift to legitimate public interest concerns it jeopardizes markets for Canadian oil and gas products.
33. Unifor is fully committed to ensuring that Canadian oil and gas resources are developed sustainably and respect for rights, and in a manner that optimizes the benefits to Canadians from the extraction of their own non-renewable resources . But Unifor also understands the importance of export markets for these resources (preferably in value-added form), and the Board's chronic failure to address issues of valid and important public concern is actually is in fact putting these markets at risk. Even leaders of the petroleum industry now acknowledge publicly that the absence of a comprehensive climate change policy, the failure to successfully engage First Nations in development planning, the helter-skelter nature of development approvals in northern Alberta, and other policy failures have all undermined the industry's international credibility and potential.
34. The failure of this Board (Joint Review Panel) to properly consider the issues of Canadian jobs, economic diversity, energy security and climate change in recommending approval for the Northern Gateway Project is now to be reviewed by the Federal Court of Appeal on an appeal by Unifor from the decision of the

⁴ OH-1-2009 Keystone XL Reasons for Decision, p. 53.

Government to approve the project. These are the very issues that Unifor has sought, unsuccessfully to have addressed in these proceedings.

35. The Unifor appeal will be heard together with those of several First Nations and two environmental groups that are also challenging Northern Gateway approvals. The appeals are to be heard in October 2015.
36. Unifor believes that it would be prudent in these circumstances for the Panel to reconsider its approach to its public interest mandate in light of the issues now pending before the Federal Court of Appeal. If the appeals succeed, any decision rendered in these proceedings will likely be a nullity given the decisions of the Panel to date. However, even should the appeals ultimately fail, the consequence of broadening the scope of these proceedings to consider issues of vital public concern, would only foster public confidence in the integrity and fairness of the hearing process.

The BC fisheries and commercial fishing industry

37. As noted, UFAWU-Unifor also represents workers in all facets of the fishing industry in British Columbia. Its members include fishermen in the salmon, herring, tuna, prawn, crab and other fisheries, and workers in fish processing facilities.
38. Guy Johnson, with whose assistance this evidence has been prepared, has fished for 40 years and been a member of the Union for that entire time; he currently sits on the General Executive Board of UFAWU-Unifor.
39. The commercial fishing industry plays an important role in BC's coastal economy and provides jobs and income to many smaller communities that have few other economic opportunities.
40. There are approximately 1000 boats in the salmon fleet of the south coast area of the province. There are also 80-100 crab boats and 150 prawn boats that fish this

area. The vessels provide well over two thousand well-paid jobs for skilled workers.

41. In addition to the fishing fleet itself, there is also a fleet of packers that transport the catch from the fishing boats to fish plants. The shore plants which process and freeze fish, shellfish and other seafoods employ another 2,000 to 3,000 workers.
42. The fishing industry generates over one billion dollars of revenue per year for BC. A large portion of the catch is exported, contributing to Canada's international balance of payments.
43. The industry brings needed jobs that pay a living wage to the residents of many coastal communities. 30% to 40% of the people working in the industry are First Nations fishermen and shore workers.
44. The industry is also critically important to the economies of many BC coastal communities. For example, in the town of Cowichan Bay, where Mr. Johnson lives, there are 10 or more prawn boats that fish from the village, each grossing from \$100,000 to \$500,000 per season. The crews on these boats are able to buy houses and raise children. The economy of the crab fleet is similar. These vessels support welding and machine shops and other service industries in their communities.
45. The rivers of the province, and the seas off the BC coast, thus provide people of BC with a large and sustainable harvest that is critical to their food security. The harvest from coastal BC waters helps feed the whole regional population high quality protein at a reasonable price. There are a number of community-supported fisheries, and fishermen sell their catch directly to the members of their communities in other ways. First Nations have harvested from the ocean for at least 10,000 years.

The TMX Threat to Fish and Commercial Fishing

46. The TMX Project offers no benefits to those who work in or depend upon the fishing industry in BC. But the increased tanker traffic required to remove products from the pipeline will disrupt the industry, and an oil/bitumen spill whether on land or at sea would be ruinous for many in the industry.
47. TMX has the potential to cause extremely serious harm to the South coast fisheries because the pipeline runs parallel to the Fraser River from Kamloops to the sea.
48. The Fraser River has the largest runs of Salmon in North America: sockeye, pink, springs, coho and Chum salmon all spawn in the Fraser. The different runs and species of salmon take advantage of all parts of the river, some spawning close to the ocean others traveling hundreds of miles inland to their spawning grounds. Each run takes advantage of a different unique aspect of the Fraser and its many tributaries; the watercourse is constantly evolving.
49. An oil spill on land anywhere along this portion of the pipeline's route would result in contamination of the Fraser river. The effect of a diluted bitumen spill into the Fraser river would be devastating to salmon stocks. In the summer and fall it would affect adult salmon returning to the spawning beds and their eggs. A spill in spring / summer would affect the even more sensitive juvenile salmon.
50. Experience with previous oil spills in river environments (such as the devastating diluted bitumen spill from the Enbridge line 6B pipeline into Michigan's Kalamazoo River in 2010) proves they are very hard to clean up, and the cleaning process itself is likely to cause further damage to the beds, and river. This problem is more acute in the case of bitumen than other forms of petroleum, because it sinks.
51. The Fraser River enters the Straits of Georgia (Salish Sea) along with many other rivers and streams. The large amount of fresh water entering these waters (Georgia straits, Puget sound area) reduces the salt level, helping to make it a very rich and bountiful area for fisheries. Strong tidal currents bring nutrients from the

deep offshore waters off the west coast of Vancouver island thru Juan de Fuca straights and Boundary passage.

52. In Vancouver, oil will be loaded onto tankers that will pass right in front of the Fraser river estuary, a huge area that is crucial for juvenile fish rearing habitat. The tankers will then pass thru Boundary passage and Juan De Fuca Strait, an area of rich crab and prawn grounds and a migration route for salmon on their way to the Fraser. The shellfish industry in BC and Washington state is also based along this route, and would also be severely affected by an oil spill.
53. The tanker route itself runs thru some of the richest marine environment on the south coast, which produces millions of salmon and provides crucial rearing habitat in the estuary of the Fraser river. The tanker traffic lane is also only two miles off shore from the wetlands at the mouth of the river.
54. Further along, tankers will pass right over important fishing grounds for the crab and prawn fishery and a number of dive fisheries. It is quite possible that these fisheries will be closed to ensure that the tankers are not impeded in any way by the small fishing vessels.
55. Even the very small recent spill of engine oil into Vancouver harbor and English Bay provides a timely warning of the potential scale of the effects of an oil spill in this region. Among other impacts, that engine oil spill resulted in DFO closing the local prawn fishery, leaving boats and their workers idle.
56. The issues raised here are virtually the same as those raised by the UFAWU in the Northern Gateway hearing. The failure of the Joint Review Panel in that case to require any meaningful assessment of these impacts before approving the project was a fundamental betrayal of its obligation to consider the public interest in a pipeline application. As noted, Unifor is currently appealing that decision to the Federal Court of Appeal.

Joie Warnock

Western Regional Director
Unifor
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