

**NATIONAL ENERGY BOARD
OFFICE NATIONAL DE L'ÉNERGIE**



**Hearing Order OH-001-2014
Ordonnance d'audience OH-001-2014**

**Trans Mountain Pipeline ULC
Trans Mountain Expansion Project**

**Trans Mountain Pipeline ULC
Projet d'agrandissement du réseau de Trans Mountain**

VOLUME 25

**Hearing held at
L'audience tenue à**

**National Energy Board
517 Tenth Avenue SW
Calgary, Alberta**

**December 17, 2015
Le 17 décembre 2015**

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HEARING ORDER/ORDONNANCE D'AUDIENCE
OH-001-2014

IN THE MATTER OF Trans Mountain Pipeline ULC
Application for the Trans Mountain Expansion Project

HEARING LOCATION/LIEU DE L'AUDIENCE

Hearing held in Calgary, Alberta, Thursday, December 17, 2015
Audience tenue à Calgary (Alberta), jeudi, le 17 décembre 2015

BOARD PANEL/COMITÉ D'AUDIENCE DE L'OFFICE

D. Hamilton	Chairman/Président
P. Davies	Member/Membre
A. Scott	Member/Membre

APPEARANCES/COMPARUTIONS

Applicant/Demandeur

Trans Mountain Pipeline ULC

- Mr. Shawn H.T. Denstedt, Q.C.
- Mr. Ian Anderson
- Ms. Ali Hounsell

National Energy Board/Office national de l'énergie

- Ms. Nicole Godbout
- Mr. Paul Johnston

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No.	Description	Paragraph No./No. de paragraphe
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--- Upon commencing at 10:00 a.m./L'audience débute à 10h00

12014. **THE CHAIRMAN:** Good morning and welcome to today's session, which is part of the National Energy Board's hearing regarding the Trans Mountain Expansion Project. This sitting is to hear oral summary argument on Trans Mountain's application filed, I note, nearly two years to the day, on December the 16th, 2013.

12015. The application is for permission to build and operate approximately 987 kilometres of new oil pipeline, to reactivate 193 kilometres of existing oil pipeline, and to build and modify related facilities such as pump stations, tank terminals, and a marine terminal between Edmonton, Alberta and Burnaby, British Columbia.

12016. My name is David Hamilton, and I am chairing this Panel. And with me, to my left, is Ms. Alison Scott, and on my right is Mr. Phil Davies. And together, we are the Panel assessing the Trans Mountain Expansion Project Application.

12017. To start, I will take a moment to review some housekeeping items.

12018. In the event that we hear a building evacuation tone, the procedure will be to exit the hearing room using the entrance that you came in. Once in the hallway, there are two evacuation stairwells. The first is at the end of the hallway to the right of the hearing room entrance doors, and a second stairwell is in the elevator lobby. Once outside the building, we will proceed to Central Memorial Park, which is two blocks south of this building.

12019. There are a number of NEB staff members who are in attendance today. You will be able to identify them because they're each wearing a gold name tag. These are the people who work with us, the Panel, to create and deliver a transparent, fair, and respectful process.

12020. At this time, I'll just take a few minutes to identify those for -- those who are with us in the hearing room.

12021. Our Hearing Manager, Margaret Barber; our Regulatory Officer, Carrie Randall; Dale Waterman, our court reporter; and then Paul Johnston and Nicole Godbout, our legal counsel.

**Opening remarks
Chairman**

12022. Today's hearing session is being transcribed, and you can get copies of the transcript later today on our website. We are also broadcasting live on the Board's website in audio and as well as, for the first time in the Board's history, video. And later today, recordings will be available for downloading. All those interested in the project will be able to view the hearing in real time, regardless of where they are located.
12023. As indicated in Procedural Direction No. 20, the Board has set time limits to hear oral summary argument. The time limit for Trans Mountain is 60 minutes, and for intervenors it is 40 minutes each.
12024. Trans Mountain's time limit is longer to reflect that the company bears the onus to persuade the Board to recommend the project, and needs to respond to issues raised by hundreds of intervenors as well as a number of letters of comment. These time limits will be strictly enforced, and they reflect that both Trans Mountain and intervenors have the opportunity to file written argument in-chief prior to providing oral summary argument.
12025. Final argument as a whole is an opportunity to express your views and opinions about the project, based on the evidence filed by Trans Mountain and intervenors on the hearing record. It is also an opportunity to make recommendations to the Board about matters within the List of Issues or on any terms and conditions to which the project should be subject if it is approved.
12026. More specifically, oral summary argument is an opportunity for Trans Mountain and intervenors to highlight and summarize key portions of their written argument or evidence already on the record, all of which the Panel has read and considered, that supports any views taken.
12027. New evidence cannot be introduced through written argument or during oral summary argument, nor can visual aids be used. It is also not necessary to repeat portions of others' argument that you agree or disagree with. You can simply adopt it in agreement, or refer to it and explain your disagreement.
12028. Final argument is also not the place to ask questions of the Board, Trans Mountain, or other intervenors. The Board will not give any weight to new evidence introduced during oral summary argument or any submissions made that do not address the List of Issues.

**Opening remarks
Chairman**

12029. My fellow Panel Members and I are looking forward to hearing from Trans Mountain and intervenors that have signed up to provide oral summary argument. The Board wishes to limit potential distractions and to provide a fair, safe, and efficient opportunity for everyone that will be providing oral summary argument.
12030. The Board expects all those in the hearing room, including Trans Mountain, intervenors, and accredited media, to maintain an atmosphere of decorum and respect for the process and for those presenting argument. Disruptions will not be tolerated, and those responsible may be asked to leave.
12031. Further, members of the media are asked; do not set up, take down, or move equipment while the Panel or a presenter is speaking, and to do so only during breaks. Media interviews are not permitted within the hearing room.
12032. Going forward, each morning, the Board will open up the floor for preliminary matters that Trans Mountain or intervenors may wish to raise. The Board may hear motions or requests directly relating to the oral summary argument process only.
12033. However, as we said in Procedural Direction No. 20, the Board reserves the right to direct that any matters raised be submitted in writing, providing all intervenors, including those not present in the hearing room, the opportunity to respond.
12034. This may include any matters not directly related to oral summary argument, or matters that could have been raised earlier. The Panel wants to ensure that we have enough time to hear Trans Mountain and each of the intervenors that have registered to present oral final argument.
12035. With that, we are ready to get under way.
12036. This morning in Calgary, we will hear from Trans Mountain. Following Trans Mountain, we will adjourn until we hear from all those intervenors who have signed up to provide oral summary argument in Burnaby in January.
12037. Before we begin, are there any preliminary matters this morning?

--- (No response/Aucune réponse)

12038. **THE CHAIRMAN:** I see none.

12039. With that, I think now we're over to you, Mr. Denstedt. And we have read your argument, so now you have 60 minutes to present Trans Mountain's oral summary argument.

--- FINAL ARGUMENT BY/ARGUMENTATION FINALE PAR MR. DENSTEDT:

12040. **MR. DENSTEDT:** Thank you, Mr. Chairman.

12041. Mr. Chairman, Panel, it's a pleasure to be here today. My name is Shawn Denstedt, and I'm here with Ian Anderson, who is the President of Trans Mountain and Kinder Morgan Canada. And I'm going to be providing the summary of thousands and thousands of pages of evidence that's been filed.

12042. So let me get right to the point. The world has changed. Canada no longer has an eager customer to the south, a luxury that we've enjoyed as long as the Trans Mountain pipeline has existed.

12043. It is imperative that Canadian producers find and access new and willing markets for its resources. If we do not, we will continue to have the value of our resources discounted from world prices, costing Canadians thousands of jobs and billions of dollars every year.

12044. This project provides us an opportunity to change that. By making a significant contribution to better market access, this project provides producers an opportunity to sell Canadian production at world prices and avoid the economic leakage from discounted prices. Canadians deserve the highest value for their resources.

12045. And there's also something fundamentally Canadian about this project. Historically, Canadians have always worked together to collectively knit this country together, to take actions to advance the common good, whether that was the railway, the Trans-Canada Highway or, indeed, the original Trans Mountain pipeline.

12046. Panel, this is one of those times. We need to do what is in the best

- interests of Canada.
12047. The opportunity this project presents can be achieved in a way that respects and minimizes the impact on the environment, addresses social impacts and provides immense economic benefits and opportunities to federal and provincial governments, First Nations and all Canadians. It does so by expanding an existing system originally built to tie western Canada together, and one that has operated successfully for more than 60 years.
12048. Real and important benefits for all Canadians should not be cast aside based on improbable risks. If the project is approved, Canadian production will have access to the Asia Pacific market.
12049. As a result, Canada and its regions will receive significant economic benefits, including increased producer revenues of \$73.5 billion [*Exhibit B431-2 - Muse Market Prospects and Benefits Analysis for TMEP Final Errata Clean (October 28, 2015) (A4U8F8)*, 7 [amount in 2012 Canadian dollars]]; increased fiscal benefits to federal and provincial governments of \$28 billion; a rise in Canada's GDP of approximately \$22 billion; and additional 123,000 person years of employment [*Exhibit B427-4 - 3a – Conference Board of Canada, TMEP Understanding the Economic Benefits for Canada and its Regions, September 21, 2015 (September 25, 2015) (A4T6F0)*, 46].
12050. The depth and breadth of evidence before the Panel demonstrates clearly and conclusively that this project is in the public interest, and Trans Mountain asks this Panel to recommend approval of the project to Cabinet.
12051. So Panel, let me take a moment to tell you where I'm going to do today.
12052. First, our written argument comprehensively covers the details that must be addressed in projects of this nature and responds to the intervenor positions. Today, I'm going to focus on the recommendations you have to make, the framework for those recommendations, the considerations that go into it, and some of the key issues, from Trans Mountain's view, that have come up in the process.
12053. So let's start with the review process itself which, in Trans Mountain's view, has been unfairly criticized.

12054. The National Energy Board was created in the 1950s as an expert tribunal to deal with the highly technical issues associated with pipeline development and to depoliticize that development. *[“In order to meet the industrial demands of Canada's future there is a need, as is set forth in the Gordon commission report, for the setting up of a Canadian energy board with a membership composed of technical personnel which might be selected by the ministers of the departments particularly interested and also by the president of the national research council. Upon that committee as well there should be representatives of industry and of the dominion and provincial governments to the end that the most effective use of the energy resources of Canada in the interests of public welfare may be assured” [House of Commons Debates (Hansard), 22nd Parl, 5th Sess Vol 1 (11 February 1957) at 1159 (Right Hon John Diefenbaker)]*
12055. Today, this Board is one of the most highly respected regulators in the world with experts in environmental protection, pipeline integrity and economics all on its staff. It regularly consults with other regulators around the world on best practices and regulatory improvement.
12056. Canada's Courts have recognized this expertise and describe the National Energy Board as the main guardian of the public interest as it relates to energy matters. *[Forest Ethics Advocacy Association v Canada (National Energy Board), 2014 FCA 245 at para 23]*
12057. The recommendations and decisions of this Board correctly attract a high degree of deference from the Courts. And why is that?
12058. It's because the Board's decisions involve complex and highly technical matters with significant public policy ramifications for which the Board is uniquely positioned to adjudicate on. *[Leroux v Transcanada Pipelines Ltd, [1998] FCJ No. 724, 1998 CarswellNat 945 (WL Canada) at para 2 (FCA); Pezim v British Columbia (Superintendent of Brokers), [1994] 2 SCR 557 at 560; Dunsmuir v New Brunswick, 2008 SCC 9 at para 49]*
12059. The Board is the expert tribunal with expertise to know what information it needs and to sift through that information to determine whether a project is in the public interest.
12060. And I say that because that's the context for this process. And now let me talk about how we got here.

12061. The genesis of this project was the request for transportation service by western Canadian oil producers and west coast refiners. That service was requested because Canadian production was, and is, constrained by a lack of pipeline infrastructure.
12062. Additional pipeline capacity is required for Canadian production to access west coast and offshore markets and to provide transportation options to producers. Additional capacity and access will help Canadian production obtain world market prices which, in turn, will benefit the Canadian economy. In the two years since this Application was filed, the prospects for getting Canadian production to market have gotten worse, not better.
12063. If approved, the project will be fully integrated with the existing Trans Mountain pipeline system, resulting in two pipelines with a combined capacity of 890,000 barrels per day.
12064. The overwhelming market demand for this additional pipeline capacity is underscored by the fact that the expansion shippers are comprised of some of the largest energy companies in the world, all of whom have entered into long-term firm service transportation contracts. There is no doubt as to the need for this project and the benefits that will flow from it.
12065. And Panel, just to say it, the expansion of the Trans Mountain system is nothing new. Since this system was completed in 1953, Trans Mountain has regularly added throughput capacity and facilities to respond to growing demand and changing shipper needs.
12066. Between 1957 and 2013, the Trans Mountain pipeline has had five expansions and has gradually increased capacity from 150,000 barrels a day to 300,000 barrels a day. *[Exhibit B1-1 - V1 SUMM (December 16, 2013) (A3S0Q7), 1-2]*
12067. This project is simply the latest response to market need and builds on Trans Mountain's history of successful expansions to an existing system.
12068. And Trans Mountain is well aware that this expansion is the largest in its history and the Board must ensure that expansions of existing systems are executed in a way that not only builds on existing programs, but complies with current standards in order to protect all Canadians. Trans Mountain fully understands that.

12069. And so when determining whether a project is in the public interest, the Board must assess the benefits and burdens of that project and consider the economic, environmental and social impacts, along with ensuring that all the technical requirements are met.
12070. Applicants are required to identify the burdens associated with the project and measures to reduce both the risk and impact of those burdens. Applicants must also identify the benefits associated with the project and measures to enhance both the likelihood and scope of those benefits.
12071. Trans Mountain has provided extensive information on the need for and potential benefits and burdens of the project in its filings and has responded to the issues and concerns raised in a thoughtful and reasonable manner. Trans Mountain has provided meaningful opportunities for all parties to engage regarding the project, and has always stood ready to engage with those who chose not to engage, in the event they might change their minds.
12072. Trans Mountain submits that this project is the optimal way for Canada to meet the demand for increased access to the west coast and Pacific basin markets. The project provides market access in a manner that respects and minimizes environmental and social risks, maximizes opportunities and benefits, and addresses the issues and concerns raised by the public in a meaningful way.
12073. So Panel, reasonable people can, and do, disagree. Over the course of the Board's review, intervenors and commenters have had the opportunity to articulate and provide the rationale for their views on the project. Certain intervenors have complained that the process was unfair and lacked rigour.
12074. The facts, Mr. Chairman and Panel, are somewhat different. Those complaints could not be more divorced from reality.
12075. The scrutiny and rigour of the review which the project has undergone is verified by the record. More than 400 parties have intervenor status and another 1,250 parties have commenter status. [*Exhibit A014 - National Energy Board - Letter and Appendices - Application for Trans Mountain Expansion Project - Ruling on Participation (April 3, 2014) (A59504); Exhibit A98-1 - Ruling No. 41 - Ruling on Participation - Trans Mountain's new preferred corridor through Burnaby Mountain (October 27, 2014) (A4D7G2)*]

12076. During the regulatory process intervenors have had multiple opportunities to ask information requests, file evidence, and submit argument. In the 29 months between the time Trans Mountain filed the application and the expected date of the NEB's report, more than 400 intervenors will have actively participated in one of the most comprehensive regulatory processes in the history of the Board.
12077. The Board asked Trans Mountain more than 400 questions in seven rounds of information requests, with additional specific information requests regarding routing, the TERMPOL report, outstanding filings and replacement evidence. [*Exhibit A18-1 - Letter and Information Request No. 1 to Trans Mountain Pipeline ULC (April 15, 2014) (A3V8V6); Exhibit A82-1 - Letter to Trans Mountain - NEB Round 2 Information Requests Requiring Full and Adequate Responses (September 26, 2014) (A4C4I9); Exhibit A127-1 - Letter and Information Request No. 3 to Trans Mountain Pipeline ULC (January 29, 2015) (A4G4L5); Exhibit A144-1 - Letter and Information Request No. 4 to Trans Mountain Pipeline ULC (March 20, 2015) (A4J8Z2); Exhibit A157-1 - Letter and Information Request No. 5 to Trans Mountain Pipeline ULC (April 29, 2014) (A4K9C6); Exhibit A107-1 - Follow-up information request to Trans Mountain regarding new preferred corridor studies (December 24, 2014) (A4F2K3); Exhibit A121-1 - Letter and Information Request to Trans Mountain regarding the TERMPOL report and outstanding filings (December 17, 2014) (A4G1Q2); Exhibit A189-1 Letter and Information Request Round 6 to Trans Mountain (July 15, 2015) (A4R4W1); Exhibit A223-1 - National Energy Board - Letter and Information Request on Trans Mountain's replacement evidence (October 20, 2015) (A4U5C9)*].
12078. Intervenors were granted two rounds of IRs and asked more than 17,000 questions. [*Exhibit B38-1 - Trans Mountain - Notice of Motion (May 28, 2014) (A3X3Y4); Exhibit B328-1 - Trans Mountain Pipeline ULC - Response to Adams Lake Indian Band Notice of Motion re IR Round 2 responses (March 12, 2014) (A4J4Z8), 2*].
12079. Six additional intervenor IR rounds were added for many topics, ranging from TERMPOL report, to Trans Mountain's reply evidence. [*Exhibit A116-1 - Procedural Direction No. 8 – Revised hearing events and steps table (December 12, 2014) (A4F9Q4); Exhibit A140 - National Energy Board - Procedural Directive No. 11 - Process for hearing motions to compel full and adequate responses to round 2b of intervenor and TERMPOL Report IRs (March 3, 2015) (A68095); Exhibit A143 - National Energy Board - Ruling No. 56 -*

Notice of motion from Trans Mountain dated 27 February 2015 requesting leave to file outstanding documents (March 13, 2015) (A68732); Exhibit A152 - National Energy Board - Ruling No. 61 - Notice of motion from Trans Mountain dated 31 March 2015 requesting leave to file its outstanding Seismic Hazard Update late (April 15, 2015) (A69507); Exhibit A22-1 - National Energy Board - Ruling No. 96 - City of Vancouver, Tsleil-Waututh, Tsawout, Upper Nicola and Metro Vancouver - notices of motion - Trans Mountain's reply evidence (October 8, 2015) (A4U2A4); Exhibit A217-1 - National Energy Board - Procedural Direction No. 18 – Revised hearing events and steps table (September 24, 2015) (A72731)]

12080. And all the parties have had the opportunity to know the case and meet the case by filing thousands of pages of their own evidence. Trans Mountain has made every reasonable effort to respond to all questions related to issues before this Panel and address their concerns.

12081. In the case of Aboriginal groups, the NEB held Oral Traditional Evidence hearings in Edmonton, Chilliwack, Kamloops, Victoria, and Calgary, during which 39 Aboriginal groups provided extensive Oral Traditional Evidence. The evidence provided by Aboriginal intervenors at those hearings is captured in 24 volumes of transcripts, all on the public record.

12082. And I say all this because the NEB process is part of ensuring that the public interest is served. [*Enbridge Northern Gateway Joint Review Panel Report (December 2013) (A56136)*]

12083. And the scope and detail of the project -- process for this project has ensured that the Panel has the information it needs to make a recommendation, and perhaps more importantly, that the public can be confident in whatever recommendation the Panel makes.

12084. So let me turn to the legal framework which will guide the recommendation that you must make to Cabinet.

12085. As the guardian of Canada's public interest when it comes to energy, the Board's recommendation must be inclusive of all Canadians and requires a balancing of economic, environmental and social considerations that change as society's values and preferences evolve. [*National Energy Board, 2014 Annual Report to Parliament, online: <<https://www.neb-one.gc.ca/bts/pblctn/nnlrprt/2014/nnlrprt2014-eng.pdf>>*]

12086. It is not site specific. It is not local. It is not provincial. It is not political. It is about what is best for all Canadians collectively.
12087. Having said that, Trans Mountain knows that local concerns matter, and as the evidence demonstrates, it has worked hard to mitigate the concerns of those who are most impacted.
12088. The Board's public interest determination falls within the legislative regimes established under the NEB Act and the CEAA 2012. Under the NEB Act, the Board is required to prepare and submit a report to the Minister setting out its recommendation and reasons whether a CPCN should be issued for the project.
12089. Regardless of its recommendation, the NEB's report must include all the terms and conditions for the CPCN that it considers are necessary or desirable in the public interest. In this case, the Board has set out 150 conditions of approval. [*National Energy Board Act, RSC 1985, c N-7, s 52(1)*]
12090. Section 52 of the NEB Act sets out the criteria the Board must consider in making its recommendation to Cabinet regarding public convenience and necessity for the project. Specifically, the Board must identify the relevant issues that it must consider, which it has done, and apply its interpretation of the issues to the facts of the proposed project. [*Forest Ethics Advocacy Association v Canada (National Energy Board), 2014 FCA 245 at para 64*]
12091. The Board has always been clear that a uniform set of criteria to determine whether a project is in the public interest does not exist. In its Emera Brunswick decision, the Board stated that there are no firm criteria for determining the public interest that will be appropriate in every situation.
12092. Just like the "just and reasonable" and "public convenience and necessity" tests, the criteria of public interest in any given situation are understood rather than defined and it may well not serve any purpose to attempt to define those terms too precisely.
12093. Instead, and appropriately, it must be left to the Board to weigh the benefits and burdens of the case in front of it based on the specific facts of that case. [*NEB Reasons for Decision - Emera Brunswick Pipeline Company Ltd. - GH-1-2006 (A15654), 93-94*]

12094. So Panel, by considering the evidence and the argument that we filed through the lens of economic, environmental and social factors, the Board can make determinations that represent the ever evolving needs of Canada and Canadians based on the current circumstances of the world as they exist at the time of the decision. And that's important; that your decision is made in the context of the time of the decision.
12095. The Board must use its extensive regulatory and energy expertise to make the recommendations based on findings of fact and its review of the scientific and technical information. And ultimately, it will be up to Cabinet to make the final decision based on the Board's recommendation and whether the Board should issue a CPCN for the project.
12096. And part of the legal framework -- to tie a ribbon around the environmental assessment process, part of the framework for decision-making for this project is the CEAA 2012. Under the CEAA 2012 the NEB is the authority responsible for conducting an environmental and socioeconomic assessment, or ESA for short. [*Canadian Environmental Assessment Act, 2012, SC 2012, c 19, s 52, s 15(b) [CEAA 2012]*]
12097. The environmental assessment process is intended to evaluate a project's potential effects on the environment before the project is carried out. [*CEAA 2012, s 4*].
12098. By integrating environmental considerations into planning, environmental assessments are important tools for decision-making and promoting sustainable development. An environmental assessment is to determine whether the project as a whole is likely to cause significant adverse environmental effects after accounting for mitigation measures.
12099. If significant adverse environmental effects cannot be avoided, those effects must be justified in the circumstances of the project before it can proceed. This is a central test of CEAA 2012 and the Board has integrated that test into its determination of its public interest recommendation.
12100. To determine whether to recommend the issuance of a certificate, the Board must consider any public interest that may be affected by granting the application or, just as importantly, the public interest that may be affected by not granting the application.

12101. Public interest is not defined or determined by loud voices, by politics, by special interests, by the company, or by individuals. Public interest is the common good. And the question you should put to yourself; is this the right thing to do for the country at this time? Is this the right thing to do for Canadians?
12102. So regardless of the clamour, the authorities are clear that a specific individual's or locale's interest must be weighed against the greater public interest. And if a project is in the greater public interest, the specific interests must give way. *[NEB Reasons for Decision - Emera Brunswick Pipeline Company Ltd. - GH-1-2006 (May, 2007) (A15654), 10; Reasons for Decision - Sumas Energy 2, Inc. - EH-1-2000 NEB (March 2004) (A0J8V7), 9; NEB Report - North Montney Mainline (April 2015) (A4K5R6), 106]*
12103. All Canadians means exactly what you think it means: People locally, regionally, and nationally; not just those in physical proximity to a project. *[Enbridge Northern Gateway Joint Review Panel Report (December 2013) (A56136), Volume 2, 8]*
12104. The Board must determine what is in the best interest of Canada and Canadians in making its recommendation.
12105. So Panel, now that I've went through the legal framework, I intend to touch on some of the evidence that Trans Mountain submits clearly supports a recommendation by this Board of the project is in the public interest and that a CPCN should be issued.
12106. And consistent with the principles of sustainable development, I'll discuss the evidence in the context of the social, economic, and environmental benefits and. And I will also highlight the engagement that has occurred between Trans Mountain, Aboriginal groups, communities, and stakeholders which will demonstrate Trans Mountain's commitment to continue to build on the more than 60 years of history Trans Mountain pipeline owners have had with many of those parties.
12107. So one objective of CEAA 2012 is to promote sustainable development and thereby achieve or maintain a healthy environment and a healthy economy. *[CEAA 2012, section 4(1)(h)]*
12108. Contrary to what others might have you believe, sustainable

development is not about doing nothing. Sustainable development is about balancing the needs of society in an informed and rational way. It's about ensuring we have a strong economy and the benefits that accompany that. And it's about ensuring we have an environment that is protected and that the risks to that environment are mitigated, and it's about social benefits and opportunities for those who are most impacted.

12109. It's up to the Board to balance those benefits and burdens in determining whether the public interest test is met. In order to do that, the context of this project, as an expansion of an existing system, is of critical importance. So let me start there.

12110. For this project, Trans Mountain has drawn on its extensive experience and the safe operation of the Trans Mountain Pipeline for more than 60 years. It is familiar with the route, the environment, the affected Aboriginal groups and communities, and the operation and design requirements of the terrain.

12111. The project has the fundamental and critically important benefit of paralleling the existing Trans Mountain Pipeline for 73 percent of its route and another -- other existing linear disturbances for another 16 percent of the route. The fact the route will follow existing disturbances for 89 per cent of its entire length is the hallmark of good environmental planning and will materially reduce the potential environmental impacts.

12112. Further, the remaining 11 percent of new routing was selected according to routing criteria developed to reduce impacts where the local circumstances have changed in the years intervening since 1953; for example, by avoiding areas with significant residential development that have encroached on the pipeline in the 60 years it was originally built [*Exhibit B2-1 - Trans Mountain Pipeline ULC - Volume 4A: Project Design & Execution - Engineering (December 16, 2013) (A3SOY8), 4A-6 - 4A-13; Exhibit B249 - Trans Mountain Pipeline ULC - Technical Update No. 1 - (August 1, 2014) (A62088); Exhibit B255 - Trans Mountain Pipeline ULC - Technical Update No. 2 - (August 22, 2014) (A62400); Exhibit B290 - Trans Mountain Pipeline ULC - Project and Technical Update No. 4 (December 1, 2014) (A64687); Exhibit B415 - Trans Mountain Pipeline ULC - Updated Response NEB IR No 3017a (July 31, 2015) (A71581)*].

12113. This routing allows Trans Mountain to use adjacent rights-of-way and existing roads and disturbances for access to the construction site, as well as the

- right-of-way itself so that only new -- minimal new access will be required for the project, further reducing the impacts. The end result is a dramatic reduction in disturbance to the environment when compared to a greenfield development.
12114. Trans Mountain is well-aware that the timing of this project has coincided with heightened public awareness of the risks associated with energy development and the transportation of petroleum products.
12115. Panel, a heightened awareness does not change the nature of the risks of pipelines. Those risks are well-understood and have long been successfully managed; in the case of Trans Mountain, for more than 60 years, and the tools to manage those risks have continuously improved.
12116. Trans Mountain has a comprehensive understanding of the risks inherent to this pipeline corridor and the pipeline design factors that must be considered along this route. Trans Mountain has mature operations, maintenance systems, and emergency response plans already in place.
12117. They will leverage their existing knowledge systems -- knowledge and systems, and will complete systematic assessments of risks that will include all planned mitigation and improvements described in the evidence into this project to enhance the system's safety and reliability. *[Exhibit B1-1 - VI SUMM (December 16, 2013) (A3S0Q7), 1-46]*
12118. And Trans Mountain, in its history, has consistently demonstrated its commitment to environmental excellence. In 2010 it received the Emerald award for its environmental initiatives undertaken on the Anchor Loop expansion through Jasper National Park *[Exhibit B1-1 - VISUMM (December 16, 2013) (A3S0Q7), 1-17]*, and it will exercise the same care here.
12119. So let me move on to public engagement.
12120. A key aspect of the project's development has been Trans Mountain's public engagement. It has been one of the fundamental building blocks of the project to consult with the public and understand their concerns. Trans Mountain has made every effort to meaningfully engage all stakeholders in the planning of the project to make sure they are informed, and that their concerns are understood and considered.
12121. By August of this year, Trans Mountain had consulted with thousands

- of individuals through 159 open houses or workshops along the pipeline route and marine corridors, and organized more than 17,000 meetings -- 1,700 meetings between project team members and stakeholder groups.
12122. Trans Mountain has responded to 954 media requests, provided 432 interviews, and responded to approximately 553 phone inquiries and 1,506 emails received from the public. *[Exhibits B1-6, B1-7, B1-8, B1-9- Trans Mountain Pipeline ULC - Trans Mountain Expansion Project Application, Volume 3A, Public Consultation (December 16, 2013) (A3S0R2, A3S0R3, A3S0R4, A3S0R5 plus appendices); Exhibit B27 - Trans Mountain Pipeline ULC - Consultation Update No. 1 - Errata (March 20, 2014) (A59343); Exhibit B248, B249 - Trans Mountain Pipeline ULC - Technical Update No. 1 and Consultation Update No. 2 - (August 1, 2014) (A62087 and A62088); Exhibit B306-12, B306-13, B306-14, B306-15, B306-16, B306-17, - Trans Mountain Pipeline ULC - Response to NEB IR No. 3.005a - Consultation Update No. 3 (February 3, 2015) (A4H1W2, A4H1W3, A4H1W4, A4H1W5, A4H1W6, A4H1W7; Trans Mountain Reply Evidence, Appendix 7A: Consultation Update No. 4 - Aboriginal Engagement (August 20, 2015)]*
12123. And all of that engagement is in addition to the Board's process.
12124. This work has been to ensure that information gained from those engagements is incorporated into project plans and project-related mitigation measures. The more than 400 commitments made by Trans Mountain during the regulatory process demonstrates its dedication to listening to the public, incorporating feedback from them, and addressing their concerns. *[Exhibit B306-3 - Trans Mountain Pipeline ULC - Response to NEB IR No. 3.001A - Attachment 1 (February 3, 2015) (A4H1V3); Exhibit B413 - Trans Mountain Pipeline ULC - Responses to National Energy Board Information Request No. 6 (July 22, 2015) (A71392), 3-4]*
12125. All of those commitments will be tracked, updated, and available on the public's -- to the public on Trans Mountain's Web site and in accordance with the Board's condition.
12126. So a good example of stakeholder feedback driving project change were the routing modifications at Burnaby.
12127. The existing Trans Mountain alignment through Burnaby was constructed more than 60 years ago. Over the decades since the system was built,

- extensive development has encroached along the pipeline route. Directly affected residents and stakeholders in Burnaby told Trans Mountain they wanted the project route altered to minimize disruption to their residential and developed areas. *[Exhibit B099 - Trans Mountain Pipeline ULC - Response to NEB Information Request Regarding Project Corridor - Appendix A Routing Consultation Summary (June 10, 2014) (A60995)]*
12128. Residents from Northcliffe and Westridge neighbourhoods repeatedly requested that Trans Mountain consider a trenchless option through Burnaby Mountain instead of routing through residential streets. *[Exhibit B290-2-Part 1, Westridge Delivery Line Routing Update (December 1, 2014) (A4F5D5), 19]*
12129. As we all know, responding to that stakeholder feedback in Burnaby has not been easy. Trans Mountain has employed considerable effort and resources to ensure that its alignment would minimize disruption to Burnaby streets and respond to take -- stakeholder concerns.
12130. To meet the NEB's requirements, Trans Mountain identified studies involving geotechnical investigations, surveys and fieldwork on the Burnaby Mountain corridor on lands belonging to the City of Burnaby. The City of Burnaby opposed the modifications, and delay occurred when Trans Mountain was unable to obtain access to Burnaby lands and conduct the Board's required studies.
12131. Trans Mountain had first to seek an NEB Order and then a court Order to access the site to conduct the studies. *[Exhibit B290-2 - Part 1 Westridge Delivery Line Routing Update (December 1, 2014) (A4F5D5), 6]*
12132. All of these steps were taken in response to concerns from directly affected landowners and stakeholders who said they didn't want the pipeline installed in Burnaby streets.
12133. So even when it's been hard to do -- and in this case we will add more than \$50 million in capital costs to the pipeline -- Trans Mountain has made every effort to accommodate the concerns of those parties who are most affected by the project.
12134. Building on the existing system and listening to and addressing the concerns of affected parties will mean fewer impacts and a better project in the long run.

12135. So let me get on to the part about benefits and burdens, Panel, and let me start with environmental impacts.
12136. So Trans Mountain submits that the evidence before the Panel on environmental issues demonstrates it has taken a thoughtful and responsible approach to minimizing environmental impacts and risk associated with the project.
12137. Trans Mountain submits the evidence supports a recommendation by this Panel that the project is in the public interest; further, Trans Mountain submits this evidence demonstrates the project is not likely to cause significant adverse environmental effects as defined in CEAA 2012.
12138. So the starting point is Trans Mountain's ESA. From the outset, stakeholder engagement has provided Trans Mountain with valuable feedback on the scope of the ESA, potential mitigation measures to reduce environmental and socioeconomic impacts, and potential routing alternatives.
12139. By engaging stakeholders in the scope of the ESA, Trans Mountain has been able to focus the issues of primary importance to the public and the -- for the project that makes for a better and more-focused environmental assessment.
12140. The purpose of an ESA is to predict the potential environmental impacts of the project, understand those impacts, and develop risk and mitigation strategies to address those predicted impacts. An ESA is not intended to eliminate all environmental impacts and risks of the project.
12141. The conclusions drawn from the ESA are to be used by the Board as a planning tool to inform its decision on the project, to appropriately regulate the project, and to determine whether the project is in the overall Canadian public interest.
12142. Trans Mountain's ESA has considered and incorporated the factors listed in Section 19 of CEAA 2012, the NEB filing manual, the NEB's List of Issues for the project including the consideration of marine shipping, and issues identified through consultation and engagement with Aboriginal groups, landowners, regulatory authorities, stakeholders, and the general public. *[Exhibit A15-3 - Hearing Order OH-001-2014 (April 3, 2014) (A3V6I2), 18]*

12143. The result is an ESA for the expansion that is comprehensive in nature and does exactly what a good environmental assessment is supposed to do; support informed decision-making.
12144. I would refer the Board to our written argument for a detailed analysis of the application of the CEAA tests and an explanation of Trans Mountain's methodology.
12145. So one of the key considerations in CEAA 2012 is the significance of project effects. So while certain project effects may be perceived as significant by some individuals, consistent with NEB practice Trans Mountain determined significance based -- consistent with NEB practice, Trans Mountain determined significance on a broader ecosystem or socioeconomic level. In the case of the project, significance was determined in the regional context.
12146. This methodology is consistent with the law, CEAA agency guidance, and past environmental assessments that have been approved by the Board. For example, the Joint Review Panel report for the Mackenzie Gas Project, the Panel concluded and I quote:
- “There may well be impacts on individuals that, from an individual perspective, would be significant, but which, again, the Panel might conclude would not be significant in the broader context.” [CEAA-MVEIRB Joint Review Panel, Foundation for a Sustainable Northern Future, Report of the Joint Review Panel for the Mackenzie Gas Project (December 2009), 103]*
12147. Therefore, when reviewing any potential adverse effects on local individuals or communities, the Board must consider the potential effect relative to the overall positive and negative impacts of the project. This involves a balanced analysis of whether the potential effect is significant and likely to occur in the context of the project and the benefits and opportunities that the project brings to all Canadians.
12148. For cumulative effects, decisions of the Board have been clear on the approach. The Joint Review Panel for the Express Pipeline Project, which included the National Energy Board, set out a three-part test for assessing cumulative effects under the former CEAA which contains language identical to the CEAA 2012 that continues to be instructive.

12149. First, there must be an environmental effect of the project being assessed. Second, that environmental effect must be demonstrated to operate cumulatively with the environmental effects from other projects or activities. Third, it must be known that the other projects or activities have been, or will be, carried out and are not hypothetical. [*NEB-CEAA Joint Review Panel, Environmental Assessment of the Express Pipeline Project: Joint Review Panel Report OH-1-95, (May 1996), 187-88*]
12150. So for there to be a cumulative effect, there must be overlap between the effects of the proposed project and other activities. If there's no overlap, there is no cumulative effect for the purposes of CEAA 2012.
12151. And second, there must be some certainty that the future activity will, in fact, be carried out for it to be considered in the cumulative effects assessment. The Panel for the Express Pipeline Project described this as, I quote, "*some probability rather than a mere possibility that the cumulative environmental effect will occur*". [*NEB-CEAA Joint Review Panel, Environmental Assessment of the Express Pipeline Project: Joint Review Panel Report OH-1-95, (May 1996), 98.*]
12152. Trans Mountain submits that the methodology it used is consistent with best practices, Board and court precedents, and provides the basis for defensible predictions. It is also consistent with common sense in its application in this project.
12153. Trans Mountain has the additional benefit of taking advantage of its operational history and its experience of operating the existing system in environmentally sensitive and important areas. That has allowed it to develop a suite of mitigation measures, based on real experience and real familiarity with the existing environment.
12154. This isn't a greenfield project. They understand the environment they're in, and they've developed mitigation strategies specific for that environment. Those are well understood and well field tested.
12155. One of the cumulative effects I'd like to touch on, though, is tanker traffic. Panel, while the Board is charged with regulating pipelines and the project is on land, there will be an increase in tankers calling at Westridge Marine Terminal. That has been, for the most part, the biggest cause of concern for interveners. But the reality is that the additional tankers calling at Westridge -- up

- to 29 more Aframax tankers per month -- will use the federally-regulated major traffic route between Port Metro Vancouver and the Pacific Ocean that has existed for decades.
12156. The existing shipping lanes that will be used by the project-related vessels are well defined and used by many different parties and vessel types.
12157. Trans Mountain's numerous safety enhancements include extending the use of escort tugs all the way to the 12-mile nautical limit and doubling the response capacity and halving the response time of the Western Canadian Marine Response Corporation.
12158. This program will provide 100 permanent new jobs in marine spill response, \$100 million of new capital, and five new bases along the shipping route. [*Exhibit B314-46 – Trans Mountain Response to City of Vancouver IR No. _2 – (stricken in part) (February 18, 2015) (A4H8I9), p108; Exhibit B19-11 - V8B_TR_8B6_01_OF_03_1_to_3.3_MAR_COMM_REC_TOUR – (December 17, 2013) (A3S4K4), p i.*]
12159. The shipping lanes are similar to a public highway that is used every day by a multiplicity of traffic. Port Metro Vancouver is a busy port. In 2012, for example, the port handled more than 3,000 foreign vessels and, facilitated the transit of 191 cruise ships. [*Exhibit B18-29 - V8A 4.2.12.2 TO T5.2.2 MAR TRANS ASSESS (December 17, 2013) (A3S4Y3), 8A-447*]
12160. Similar to a highway, these shipping lanes are subject to a detailed regulatory regime which are akin to the rules of the road. They're administered by a variety of federal and international authorities such as Port Metro Vancouver, the Pacific Pilotage Authority, Canadian Coast Guard, Transport Canada and the International Maritime Organization.
12161. The project results in no fundamental change to the risk that exists today. And that's important. The project results in no fundamental change to the risks which currently exist.
12162. So when considering the potential disturbances to marine species and habitats from the increase in tanker traffic, the Board must consider those disturbances within the context of the existing shipping lanes, the large volume of existing vessel traffic, and the regulation of those shipping lanes by other authorities under a comprehensive regulatory regime. [*Exhibit B18-22 - V8A*

4.2.1 F4.2.2 TO 4.2.3.1 MAR TRANS ASSESS (December 17, 2013) (A3S4X6), 8A-101]

12163. Within that context, I want to discuss the potential impacts of increased tanker traffic on the southern resident killer whale.
12164. Due to the current endangered status of that population, coupled with the fact that the entire population spends much of its time in the marine regional study area within the existing shipping lanes, Trans Mountain's experts determined that any residual effect, however small, beyond current levels was undesirable and, for that reason, determined the underwater noise effects on southern resident killer whales may be significant. *[Exhibit B18-29 - V8A 4.2.12.2 TO T5.2.2 MAR TRANS ASSESS (December 17, 2013) (A3S4Y3), 8A-325]*
12165. Addressing this issue, which covers existing shipping lanes and existing marine traffic, requires an industry-wide effort. Trans Mountain has committed to a joint industry effort to address the issue by actively supporting the ECHO Program, which is a Port Metro Vancouver-led multi-party initiative focused on undertaking research and exploring solutions to offset the effects of underwater noise from marine vessel traffic on the population and associated effects on the traditional use of that population. *[Exhibit B417-4 - Trans Mountain Pipeline ULC - Reply Evidence - Part 3 (August 20, 2015) (A4S7F1), 51-1]*
12166. The ECHO Program is also investigating technological solutions such as real time whale detection technologies that may provide means to prevent ship strikes while simultaneously allowing maritime commerce and other activities to proceed with limited biological or economic impact.
12167. And while there's a low likelihood of whale strikes involving project tankers, Trans Mountain will instruct tanker operators to report to the authorities any marine mammal strikes and any marine mammals in distress on the route.
12168. Industry-wide issues caused by existing conditions must be dealt with by industry-wide initiatives.
12169. Since the existing cumulative effects on these indicators are already significant, any further residual effect may also be significant. So project approval for these two residual effects will require justification under CEAA

2012. However, it is important to note that such justification must reflect the following facts.
12170. First, neither Trans Mountain nor the National Energy Board has direct control over marine vessel activity within the southern resident killer whale critical habitat.
12171. Second, the project will only slightly increase existing levels of marine shipping in this area.
12172. Third, the shipping lanes that will be used by project-related vessels already exist, are well utilized and are subject to strict regulation by federal authorities.
12173. Fourth, the shipping lanes will continue to host marine vessel traffic with or without this project.
12174. And fifth, the impact will continue to be significant with or without this project. That risk must be weighed against the significant benefits, which I'm going to discuss shortly.
12175. And finally, any justification decision should also consider Trans Mountain's commitment to work collaboratively with regulators and other members of the maritime community to find solutions to adverse effects on the southern resident killer whale. [*Exhibit B239- - Trans Mountain Response to NEB IR No. 2 (July 21, 2014) (A3Z4T9), 154*]
12176. In these circumstances, Trans Mountain submits those potential effects are justified.
12177. So let me spend a moment on spills. So as a starting point for our detailed submissions on spills or accidents related to the pipeline and the marine environment, I'd refer the Board to our written argument. [*Exhibit B444-2 - Trans Mountain Revised Final Argument (clean) – (December 15, 2015) (A4W6L8), 288 – 294 and 330 – 348*]
12178. With that being said, perhaps the most debated issue in the entire process has been both the likelihood and the potential impacts of spills. In order to fully understand this issue, the Board must assess first what is the likelihood of the event occurring.

12179. Oil sands products have been safely transported by Trans Mountain pipeline for decades. Operating experience and expert analysis, which is verified by an increasing safety trend, concluded that an accident or malfunction resulting in a significant spill is extremely unlikely for the project.
12180. And following on that risk assessment, the pipeline ecological risk assessment concluded that, while unlikely, credible worst case spills could have a medium to high magnitude ecological effects, but that these effects would be reversible.
12181. While these effects could contribute to negative effects on Aboriginal and recreational fisheries, evidence from actual case studies show that freshwater ecosystems recover from oil spills often within relatively short periods of time. A smaller spill confined to land would be unlikely to result in negative effects on Aboriginal and recreational fisheries.
12182. Trans Mountain submits that, first, a major release from the pipeline or facilities is extremely remote and, second, that the potential spill-related environmental effects that could result from a large oil spill at any location along the proposed corridor have been adequately assessed and will be contained by emergency response and contingency planning.
12183. And finally, Trans Mountain has the financial capacity, specifically \$750 million of spill liability insurance and equity in the order of \$3.2 billion, to address any credible spills and is committed to remediating any impacts in the unlikely event of a spill.
12184. So with respect to spills or accidents in the marine environment, as the Board knows, Trans Mountain doesn't own or operate the tankers or barges that call at Westridge Marine Terminal.
12185. It is, however, an active member of the maritime community and works with maritime agencies to promote best practices and facilitate improvements focusing on the safety, efficiency, and environmental standards of tanker traffic in the Salish Sea.
12186. With mitigation measures in place, the probability of a credible worst-case oil spill from a project tanker is forecast to have a potential return period of once in 2,841 years.

12187. The existing marine network is well-managed and safe and has the capacity to safely accommodate project tankers with the application of the agreed-upon risk mitigation measures.
12188. The risk of an oil spill in the region if the project is approved will be fundamentally the same as it is today.
12189. The basic -- this basic conclusion has been reinforced by Trans Mountain's refinements to tanker procedures, based on the TERMPOL committee's endorsements.
12190. And for the project, Det Norske Veritas conducted a comprehensive marine and navigation risk study that demonstrated a major oil spill will remain a very low likelihood event in the region.
12191. While some intervenors disagree, we have dealt with the credibility of those positions in our written evidence.
12192. Marine spill prevention, response, and mitigation are paramount concerns for Trans Mountain and will remain its priority indefinitely.
12193. Trans Mountain's primary objective is to prevent spills from occurring. To achieve this objective, incident prevention measures will be incorporated throughout the full project lifecycle, starting with formalized risk assessments of preliminary engineering designs, through to pipeline construction, facility expansion, and overall system operation and maintenance. *[Exhibit B18-1 - V7 1.0 TO 5.2.8.3 RISK ASSESS MGMT SPILLS (December 17, 2013) (A3S4V5), 7-3]*
12194. And of course, with every environmental assessment, there's the need to follow-up and make sure the predictions are correct.
12195. So as the Board knows, predicted effects are just that, predicted. Verification of those effects and adaptive management are a key component of environmental assessment, to ensure that mitigation is working and adjusted as necessary.
12196. Trans Mountain will conduct extensive monitoring and follow-up for the project to test the accuracy of predictions made in the ESA for biophysical and

- socioeconomic components, to verify the effectiveness of mitigation measures, and to adapt the mitigation as necessary.
12197. Trans Mountain has proposed a comprehensive Post-Construction Environmental Monitoring program that is similar to recently approved programs on other NEB regulated projects. [*Exhibit B417-2 – Trans Mountain Pipeline ULC – Reply Evidence – Part 1 (stricken in part) (August 20, 2015) (A4S7E9), 24-6]*]
12198. The objective of the program is to determine if the environment is on a successful trajectory towards pre-construction conditions, or acceptable operational conditions.
12199. It is not only a critical component of demonstrating success, but also a useful tool to ensure that reclamation methods are continuously improved. The results will be submitted to the NEB in accordance with the Board’s conditions.
12200. The Board can be confident that the construction and operation of the project, subject to the Board’s conditions, and the extensive regulatory regime that is currently in place, can be carried out in a manner that will have no unacceptable environmental effects.
12201. The only predicted significant adverse environmental effects are for the southern resident killer whale, which I have just discussed and can be justified in the circumstances of this case.
12202. So let me turn to the social impacts of the project. To better understand the potential social impacts, Trans Mountain designed a consultation process to ensure that all stakeholders had the opportunity to understand and have input into the project, and to participate in the regulatory process.
12203. Prior to and during the regulatory process, Trans Mountain consulted with thousands of individuals to understand their concerns.
12204. And that’s the key part of understanding and determining what social impacts might occur. [*Exhibit B27 – Trans Mountain Pipeline ULC – Consultation Update No. 1 – Errata (March 20, 2014) (A59343); Exhibit B248, B249 – Trans Mountain Pipeline ULC – Technical Update No. 1 and Consultation Update No. 2 – (August 1, 2014) (A62087 and A62088); Exhibit B306-12, B306-13, B306-14, B306-15, B306-16, B306-17, - Trans Mountain*]

Pipeline ULC – Response to NEB IR No. 3.005a - Consultation Update No. 3 – (A4H1W2, A4H1W3, A4H1W4, A4H1W5, A4H1W6, A4H1W7); Trans Mountain Reply Evidence, Appendix 7A: Consultation Update No. 4 – Aboriginal Engagement (August 20, 2015)]

12205. This information, along with baseline data collection and technical analysis was, and will continue to be, evaluated for incorporation into project planning and design, and guide the development and implementation of the project-related mitigation measures for potential social impacts.
12206. As I mentioned earlier, the Trans Mountain has made more than 400 commitments to address concerns raised by the public; it bears reemphasizing here. *[Exhibit B306-3 – Trans Mountain Pipeline ULC – Response to NEB IR No. 3.001A – Attachment 1 (Trans Mountain Expansion Project Commitments Tracking Table) (February 3, 2015) (A4H1V3)]*
12207. If the project is approved, each and every one of these commitments, many of which address social impacts, will all be implemented.
12208. When it comes to directly affected parties, the majority of landowners affected by the project are already familiar with Trans Mountain.
12209. Trans Mountain understands well the importance of maintaining these relationships, and as part of its Landowner Engagement Program, Trans Mountain maintains a database that includes all concerns and all commitments received and made to landowners and users to inform the project routing and design which will be implemented to minimize impacts and disturbances to those landowners and users.
12210. Trans Mountain has worked hard to address the disruption to communities which the project will impact, and through Community Benefit Agreements, provide tangible benefits to the local communities on the route that are impacted by the construction of the pipeline.
12211. Trans Mountain is working with numerous communities and educational institutions along the pipeline to offer a legacy of programs -- community programs and infrastructure improvements, environmental stewardship, ecological benefits, and educational scholarships and bursaries. These legacies serve the important purpose of building the social and human capital of the 94 communities along the pipeline right-of-way that are the most

- impacted by the project.
12212. To date, more than \$5.5 million has been made available to communities representing 87 percent of the pipeline corridor. [*Exhibit B306-12 – Trans Mountain Response to NEB IR No. 3.005a-Attachment 1-Part 1 (February 3, 2015) (A4H1W2)*]
12213. Trans Mountain has also been working hard to maximize the opportunities for local, regional, and Aboriginal groups along the proposed pipeline corridor.
12214. To foster the creation and development of economic development opportunities for Aboriginal groups, a funding program has been established to contribute to education and training initiatives that focus on pipeline construction and related transferable skills. [*Exhibit B1-39 - V3B 1.0 TO 3.0 ABOR ENGAG (December 16, 2013) (A3S0U5), 24-25*]
12215. Based on the latest Consultation Update filed, Trans Mountain has executed has executed more than 100 agreements with Aboriginal groups, which include resources for Traditional Environmental Knowledge and Traditional Land and Resources Use studies, capacity funding, and integrated cultural assessments with an aggregate dollar commitment in excess of \$34 million. [*Exhibit B306-2 – Trans Mountain Response to NEB IR No. 3 (February 3, 2015) (A4H1V2), 8; Exhibit B417-22 – Reply Evidence - Appendix 7A – Consultation Update No. 4 – Aboriginal Engagement Part 2 - (August 20, 2015) (A4S7G9)*]
12216. No significant adverse residual social effects are anticipated in relation to the project. Trans Mountain submits that the mitigation measures it proposes are effective and that the issues that have arisen during the process have, and will be, addressed.
12217. So let me just touch briefly on emergency response because it came up as an issue during the course of the proceedings.
12218. There has been a lot of criticism of Trans Mountain's emergency response plans and, quite frankly, it's unfounded.
12219. Trans Mountain is prepared to respond to all credible emergency incidents that may occur on the Trans Mountain system, and emergency response measures -- procedures are in place, which, in conjunction with trained personnel

and equipment inventories in key locations, are critical elements of the company's Emergency Response Program and Emergency Response Plans. Trans Mountain's risk analysis for the pipeline, facilities, and project-related tankers have been well-documented in this proceeding and indicate that material spills are simply not likely to occur.

12220. Despite that low risk, Trans Mountain has committed to develop an enhanced Emergency Management Plan for the expanded system informed by consultation and the outcomes of this process. Trans Mountain's proposed designs include effective emergency response systems which exceed minimum statutory requirements and must, in accordance with Board conditions, be verified by a qualified third party.

12221. For example, Trans Mountain's design for fire-protection systems at the Burnaby Terminal exceeds industry standards and is detailed in our written argument. *[Exhibit B417-2 – Trans Mountain Pipeline ULC – Reply Evidence – Part 1 (stricken in part) (August 20, 2015) (A4S7E9), 24-18.]*

12222. So let me turn to the purpose and need for the project, and the economic benefits.

12223. So from an economic perspective, two linked issues are of fundamental importance in the proceeding. The first is market access and the second is obtaining world prices for Canadian resources.

12224. The reality is that Canadian resources are being held captive by a lack of infrastructure, and as a result are being sold at a discount to world prices. New pipeline capacity to alternative markets is essential for producers to obtain access to the highest value markets on an ongoing basis, and for Canadians to realize the economic benefits that go along with higher prices for our resources.

12225. Enhancing access to growing Pacific basin markets, especially Asian markets, provides a critical alternative market to Canadian crude oil producers in the face of flat demand and increasing production in the United States.

12226. So demand for transportation services on the current Trans Mountain system demonstrates the need for this project. Currently, the demand exceeds capacity resulting in the need to apportion the existing capacity on that system. The need for the project has been conclusively demonstrated by the long-term financial commitments shippers have made by entering into firm contracts for 80

- percent of the capacity on the expanded system. *[This represents the full amount of the project's nominal capacity that was made available for firm service, with the remaining 20 percent of nominal capacity reserved for common carriage service.]*
12227. Increased transportation capacity is also required to achieve market outcomes whereby price differences between markets that exceed the transportation costs are eliminated by market participants taking advantage of increased capacity until prices converge across markets.
12228. The project is required to provide needed market diversification and optionality for western Canadian producers. Oil markets are continually subject to changing market conditions.
12229. For western Canadian producers to have the opportunity to obtain access to the highest value markets on an ongoing basis, sufficient pipeline capacity to alternative markets is required and needed. That access will alleviate the potential for price discounts and will generate a significant price uplift for Canadian production.
12230. The project will reduce the amount of western Canadian crude forced into the North American market and shift sales to the more sizable Asia-Pacific market. As a result, in the initial years of the project's operation, the need for more expensive rail transportation will be largely eliminated.
12231. Those transportation savings will flow back to Canada in the form of higher prices for producers and increased economic benefits for all Canadians. *[Exhibit B431-2 – Muse Market Prospects and Benefits Analysis for TMEP Final Errata (Clean) (October 28, 2015) (A4U8F8), 15; Exhibit B427-4 – 3a Conference Bard of Canada, TMEP Understanding the Economic Benefits for Canada and its Regions, September 21, 2015 Clean (September 25, 2015) (A4T6F0), 8 & 39-40 [amounts in 2012 Canadian dollars]]*
12232. The Board has acknowledged that well-functioning, competitive markets efficiently balance supply and demand and lead to innovative and robust energy systems. The increased capacity the project creates will help ensure that Canadians benefit from efficient energy infrastructure and markets.
12233. Some interveners have argued the project will result in excess capacity.

12234. Panel, there is no credible evidence that the project will result in unnecessary excess capacity that will be a burden to the industry and a net social cost, particularly in light of recent developments regarding other pipeline projects. Rather, the evidence indicates that industry needs additional pipeline capacity as soon as possible, and the benefits and potential -- of any potential excess capacity will far outweigh the costs.
12235. Some interveners have argued there are material negative economic consequences of the project. The City of Vancouver presented an interpretation of spill costs intended to show that a marine spill in the City of Vancouver environment will have economic costs of up to \$1.23 billion. [*Exhibit C77-31-8-Appendix 83 (May 27, 2015) (A4L9G4)*]
12236. But Panel, what is lacking in their analysis is a consideration of likelihood of that event.
12237. If the consequence is extremely unlikely -- and in the case of Vancouver, we'd submit it's not even credible -- then everything that flows from that flawed analysis is equally unlikely. To suggest that the potential economic impacts of a highly unlikely, in our view, uncredible spill offsets, in any manner, the significant economic benefits of the project, defies both logic and common sense.
12238. The assumptions and conclusions in Vancouver's evidence are simply not credible, and we've dealt with that in detail in our reply evidence and final argument. [*Exhibit B417-4 – Trans Mountain Pipeline ULC - Reply Evidence - Part 3 (August 20, 2015) (A4S7F1), 61-4; Exhibit B418-5 – Reply Evidence – Attachment 1.06 – Reply to Impacts to Ocean-dependent Activities (August 20, 2015) (A4S7K3)*]
12239. In contrast to the assumptions and methods used by Vancouver, the assumptions and approaches which Trans Mountain relies on for assessing spill costs are conservative to ensure costs are not underestimated, but also reasonable to ensure the estimated costs are credible.
12240. They suit the purpose, the location, and the circumstances of the project. They are site specific and provide an assessment designed to look at the actual risk of the project, not a flight of fancy to serve a pre-determined position.

12241. As I've already discussed, the significant evidence on the public record demonstrates that adequate financial resources are available to address claims in the unlikely event of a spill. [*Exhibit C353-4-3 - TMEP TERMPOL Report December 11 2014 (December 11, 2014) (A4F8Z4)*]
12242. So in contrast to Vancouver's position, the economic benefits of this project are real and highly certain. If the project is approved, it will be a major addition to the crude oil distribution infrastructure in North America, provide access to the Asia-Pacific market and give Canadian crude oil producers an attractive alternative to their historical markets within North America.
12243. Accordingly, the project is expected to have a material effect on distribution patterns and pricing dynamics for western Canadian crude oil. [*Exhibit B431-2 - Muse Market Prospects and Benefits Analysis for TMEP Final Errata Clean (October 28, 2015) (A4U8F8), 9*]
12244. Canada and its regions will receive significant economic benefits, producer revenues are forecasted to rise by \$73.5 billion over the first 20 years of the project in 2012 dollars. [*Exhibit B431-2 - Muse Market Prospects and Benefits Analysis for TMEP Final Errata Clean (October 28, 2015) (A4U8F8), 7 (amount in 2012 Canadian dollars)*]
12245. According to the Conference Board of Canada, the overall economic benefits associated with the construction and operation of the project include a boost to Canada's GDP of approximately \$22 billion and 123,000 person years of employment. [*Exhibit B427-4 - 3a – Conference Board of Canada, TMEP Understanding the Economic Benefits for Canada and its Regions, September 21, 2015 (September 25, 2015) (A4T6F0), 46*]
12246. The fiscal benefits to federal and provincial governments from the development and operation of the project and higher netbacks to producers are estimated to be approximately \$28 billion over the same period. [*Exhibit B1-4 – Trans Mountain Expansion Project Application, Volume 2, Project Overview 3 of 4 (December 16, 2013) (A3S0R0), 2-41-2-42; Exhibit B418-1 – Reply Evidence – Attachment 1.02 –Reply to Goodman and Rowan Report (stricken in part) (August 20, 2015) (A4S7J9); Exhibit B427-4 - 3a – Conference Board of Canada, TMEP Understanding the Economic Benefits for Canada and its Regions, September 21, 2015 (September 25, 2015) (A4T6F0), 45; Exhibit B427-6 - 4a – Direct Evidence of John J. Reed (September 25, 2015) (A4T6F2), 5; B431-2 - Muse Market Prospects and Benefits Analysis for TMEP Final Errata Clean*]

(October 28, 2015) (A4U8F8), 14]

12247. There will also be significant benefits to Aboriginal groups and communities along the right-of-way through employment, economic activity and the payment of higher municipal taxes.
12248. The project represents a multi-billion dollar [*Exhibit B1-1 - VI_SUMM (December 16, 2013) (A3S0Q7); in nominal dollars (or \$4.9 billion in 2012 Canadian dollars)*] investment in Canadian infrastructure, which will help realign Canada's pipeline system with changing supply and demand fundamentals, enhancing market efficiency. There is no doubt that the economic benefits are many and significant and more important now than ever to Canadians as a result of the world we now find ourselves in.
12249. So let me make a few comments on the conditions and the Section 58 request before -- near the finish here. Panel ---
12250. **THE CHAIRMAN:** Just -- I don't want to interrupt you. You have five minutes left to do that.
12251. **MR. DENSTEDT:** All right. Well, then I'm going to go real quick and summarize a few things I wasn't going to. All right. Thank you, Chairman.
12252. Panel, Trans Mountain has sought approvals for the project under Sections 58 and 52 of the NEB Act and understands that it must comply with any conditions. And the Board released those conditions on August 12th and December 15th. We provided detailed responses in our written evidence, but I've got a few comments to make today.
12253. As a result of the excluded period announced by the NEB in September, Trans Mountain's construction schedule has been delayed and the in-service date is now expected in October of 2019, dependent, of course, on Governor in Council approval of a positive Board recommendation.
12254. So in order to meet that in-service date, it is absolutely critical that Trans Mountain's early works activities be authorized under Section 58. By authorizing those works, it will allow Trans Mountain to commence those activities as soon as possible if a favourable Cabinet decision is received.
12255. And the reason we need to do that, or Trans Mountain needs to do that,

is that in order to authorize those works -- I'm just going to ---

12256. So in addition to that -- let me talk about the conditions first.
12257. So the conditions compliance filings, there's a number of time periods in those conditions that need to be abridged, and I'll explain why. And so there's going to be some filings made.
12258. Again, assuming a positive Board decision, Trans Mountain intends to do its compliance filings prior to the Cabinet issuing its decision and it accepts that there is a risk that the Cabinet will turn down the project. But in order to meet those timelines in the conditions, it has no choice but to file them in advance.
12259. The proposed construction date, start date, plays a significant role in complying with the environmental protection windows, and that's why we're asking for the early Section 58 for early works, and it also allows Trans Mountain to stage the execution of the construction of the project in a manner that will maximize the benefits to Aboriginal parties. And that's the reason for the request on Section 58.
12260. In respect of Aboriginal engagement -- and it's clearly outlined in our written argument, but let me just give you a little bit of the flavour about where we are with the Aboriginal groups.
12261. So as of December 15th on -- of this year, 30 Aboriginal groups and communities located along the project's corridor have supported the -- have filed non-objections to the project and support for the project, and they're in both Alberta, British Columbia, including Vancouver Island, those 30 letters of support. And in several cases, some of the Aboriginal groups have in addition to supporting the project, said this project will have positive effects.
12262. And we think that's the -- largely the efforts of Ian Anderson, who's taken this as his job to spearhead this leadership with the Aboriginal groups and has really made this work for the company. Trans Mountain also continues to work with all Aboriginal groups and, with or without agreements, there's a commitment on them to maximize the benefits to the groups.
12263. So let me just conclude. Panel, your task is to balance the burdens and benefits of the project in arriving at your public interest determination. That

- means critically looking at the evidence on environmental, social and economic issues and demining what is credible and what is not credible.
12264. Trans Mountain submits that, by building on its existing system, paralleling the existing right-of-way and implementing well-known and proven mitigation, there are no environmental or social impacts that cannot be reasonably mitigated.
12265. That conclusion must be balanced with the material and certain economic benefits that will flow from increased market access, world prices for our resources, taxes, royalties and the jobs and opportunities that accompany the development of the project.
12266. In looking at the evidence, the Board must distinguish between what is likely to happen and what is not likely to happen and make its decision accordingly. Real and important benefits for all Canadians should not be cast aside based on improbable risks.
12267. When the Board balances the benefits and burdens, Trans Mountain submits that it should arrive -- it should arrive at only one conclusion; that this project is in the public interest.
12268. The project, Panel, is critical to the country and all Canadians. We should not, we cannot accept that our resources will be forever held hostage and sold at a discount. The project is responsible and reasonable solution to that problem and will confirm that Canada still works.
12269. Panel, Trans Mountain respectfully requests that you grant the relief requested in our written argument. And I thank the Board and the Board staff and all the participants. And unless there's any questions, that concludes my remarks and I'm out of time so...
12270. **THE CHAIRMAN:** You had about 20 seconds left. And I wouldn't have -- thank you.
12271. Thank you, Mr. Denstedt.
12272. The Panel will take a brief 15-minute recess to consider whether we have any questions or not. So we'll come back at 25 after 11:00.

12273. **MR. DENSTEDT:** Thank you.

--- Upon recessing at 11:08 a.m./L'audience est suspendue à 11h08

--- Upon resuming at 11:23 a.m./L'audience est reprise à 11h23

12274. **THE CHAIRMAN:** Thank you, Mr. Denstedt. The Panel do have a couple of questions for Trans Mountain. And perhaps, Ms. Scott, would like to go first.

12275. **MEMBER SCOTT:** Mr. Denstedt, you mentioned in your concluding remarks your request for the Section 58 exemption. And normally, the Section 58 exemption is given -- in our reasons for decision, it's contingent on Governor in Council approval. And I just wondered if you could elaborate a bit about how you see this working and the scope of the application of the 58 that you're seeking.

12276. **MR. DENSTEDT:** Yeah, thanks for that question. That was one of the parts that I ran out of time on so...

12277. Yeah, so the -- what we envision on the Section 58 is that what the Board would do is if they were inclined to approve the project and issue a Section 58 order, it would be conditional on Cabinet approval, GIC approval and be effective on that time, so that if Cabinet approval is granted, the works that are requested under Section 58 could be commenced immediately. That -- that's the intention.

12278. **THE CHAIRMAN:** Thank you.

12279. As you know, the Panel have read, you know, all your company's final written argument and we've heard your submissions today. We're just interested, however, in some further comment you may wish to offer on behalf of Trans Mountain in relation to a particular question.

12280. Trans Mountain, you know, has acknowledged the significant adverse effects in relation to two areas. One, in relation to residual effects on the southern resident killer whale associated with increased project related marine vessel traffic; and two, in relation to traditional use associated with the southern resident killer whale.

12281. And the company has also stated that there are no feasible mitigation

- measures to address these significant effects. We have also -- you have also pointed out the jurisdiction of other federal departments in this regard.
12282. In respect of issues that fall outside the NEB jurisdiction to regulate, the Board has an obligation to make a recommendation in relation to Trans Mountain's application in terms of public interest, as you well know.
12283. Can you afford -- can you offer any further comment on behalf of Trans Mountain as to how the Board should weigh these effects when making the public interest assessment?
12284. **MR. DENSTEDT:** Thank you, Mr. Chairman. Yeah, briefly I can provide some more thoughts on -- and guidance on that.
12285. So this is a unique situation. It's a situation where a species, an endangered species is -- its primary area is located pretty much smack dab in the middle of some of the busiest shipping lanes in Canada. And that requires, as I said before, an industry-wide approach to address the issue.
12286. So while it's correct that there's no individual mitigation -- feasible mitigation that Trans Mountain could do on its own, the commitment by Trans Mountain is to -- is to work with the Port Metro Vancouver and the other industry participants to develop technology and solutions that will have a -- have, in the long term, a benefit to the southern resident killer whale.
12287. And point being that, at the end of the day, the kind of resources, both technological and financial, that Trans Mountain can bring to the solution of this issue that is -- will exist whether or not the project goes ahead, actually means that if the project were to be approved and Trans Mountain is part of that overall solution, there may, in the long term, be an actual benefit of moving the ball down the field, so to speak, in protecting this species and ensuring that the -- some of the technological innovations that are being led by the ECO program are actually brought into play, and Trans Mountain wants to be a part of that.
12288. So we think that's a -- that will be useful to the entire maritime community at the end of the day.
12289. **THE CHAIRMAN:** Thank you for that submission.
12290. With that, Mr. Anderson, Mr. Denstedt, thank you for presenting Trans

Mountain oral summary argument.

12291. We are now adjourned until 9 a.m. Pacific time on Tuesday, January the 19th, 2016 at the Delta Hotel in Burnaby, British Columbia where we will begin by hearing from the City of Surrey.

12292. Thank you.

--- Upon adjourning at 11:28 a.m./L'audience est ajournée à 11h28