
TO: CITY MANAGER **DATE:** 2014 August 20

FROM: DIRECTOR PLANNING AND BUILDING **FILE:** 2125 20
DIRECTOR ENGINEERING *Reference:* UBCM Resolutions
CITY SOLICITOR

SUBJECT: 2014 UBCM RESOLUTION –
THE NATIONAL ENERGY BOARD PUBLIC HEARING PROCESS

PURPOSE: To present an ‘Emergency Resolution’ for submission to the 2014 Union of BC Municipalities (UBCM) Convention.

RECOMMENDATIONS:

1. **THAT** Council endorse the resolution titled: “The National Energy Board Public Hearing Process” outlined in Section 2.0 of this report for submission to the 2014 UBCM Convention.
2. **THAT** staff be authorized to forward a copy of this report to the UBCM, located at Suite 60, 10551 Shellbridge Way, Richmond, BC, V6X 2W9.
3. **THAT** copies of this report be forwarded for information to: Burnaby MLAs, MPs, and the Federation of Canadian Municipalities.

REPORT**1.0 INTRODUCTION**

Each year, Burnaby Council considers new resolutions for submission to the Lower Mainland Local Government Association (LMLGA) Annual General Meeting for adoption and advancement to the Union of BC Municipalities (UBCM) Convention. These resolutions are a means to request amendments to the *Community Charter*, *Local Government Act* and other Provincial or Federal legislation and policies to address issues of significance to local governments.

In 2013, Kinder Morgan filed an application with the National Energy Board to expand the Trans Mountain Pipeline (TMEP), including substantial expansion of its terminals located within the City of Burnaby. The TMEP poses significant concerns for the City, given the impacts and risks the project would have on Burnaby and its residents, including human health and safety risks, oil spill/accidents risks and emergency response issues, seismic risk impacts, land-use impacts, environmental impacts, and socio-economic impacts.

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Given the scope and extent of potential public safety and environmental impacts, the City filed and obtained Intervenor status, opposing the proposed TMEP. In addition, at its meeting of 2014 March 10, Burnaby Council adopted a report outlining the City's annual resolutions submission to the UBCM. The report included a resolution related to 'Comprehensive Pipeline and Energy Transport Plan' (see **Attachment #1**) which opposes Kinder Morgan's Trans Mountain Pipeline system expansion application, and calls for the development of a comprehensive pipeline and energy transportation plan through community and stakeholder consultation. This resolution has already been reviewed and accepted through the standard UBCM resolution process for consideration at the 2014 UBCM Convention.

The following report presents a further resolution for submission to the 2014 Union of BC Municipalities (UBCM) Convention relating to the National Energy Board's Public Hearing Process. According to the Procedures for Submitting Resolutions to UBCM, this resolution is to be filed as an "Emergency Resolution", as the deadline for submitting resolutions (2014 June 30) has passed and the issue, related to the Public Hearing process, has arisen following this date.

2.0 PROPOSED 2014 'EMERGENCY RESOLUTION' – THE NATIONAL ENERGY BOARD PUBLIC HEARING PROCESS

Unlike previous major energy projects which have been reviewed by the National Energy Board through Public Hearing processes, that allow for oral testimony and cross examination of evidence submitted by the Applicant and Intervenors, the process established by the National Energy Board for the TMEP was varied from this standard procedure as provided by legislation, is not a true 'Public Hearing' process. As a result, the 'Public Hearing' process being pursued is unbalanced, unfair, and biased in favor of the applicant's corporate interests over the protection of the public from significant environmental, social and economic impacts. The process approved thus far by the NEB has not provided for a true Public Hearing that would allow for both oral hearings and cross-examination of evidence for the TMEP despite widespread interest from Local Governments, First Nations and citizens.

It is further noted that, in 2012, Kinder Morgan filed an application with the National Energy Board for tolls that would be implemented as part of the TMEP. This Application, formally titled "The Trans Mountain Application for Approval of the Transportation Service and Toll Methodology for the Expanded Trans Mountain Pipeline System" (RH-001-2012) falls under Part IV of the NEB Act, and therefore did not automatically trigger a Public Hearing. Notwithstanding the above, the Board held a full Public Hearing, and provided all parties, including NEB counsel, with the opportunity to cross-examine witnesses on their evidence as part of the Panel's review. This forum provided the applicant and industry opportunity to fully participate in an open Public Hearing process with oral hearings and cross examination. In May 2013, the Board approved the contract terms and structure that arose from this more complete Public Hearing process.

In December 2013, Kinder Morgan filed an Application with the National Energy Board for a Certificate of Public Convenience and Necessity (CPCN), as required under Section 52 of the National Energy Board Act to permit construction and operation of the TMEP. For this application, the National Energy Board made a decision to exclude from the approved "Public

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Hearing” process, the formal oral hearing and cross examination of evidence components that are standard in a comprehensive review process. In response, several intervenors, including the City of Burnaby, objected to this decision and requested restoration of the full Public Hearing process. On July 15, 2014 the NEB issued Hearing Order OH-001-2014 which provided a revised hearing events and steps table which confirmed their decision not to implement a Public Hearing which includes an oral hearing and cross-examination of evidence.

Additionally, this Hearing Order established a new deadline (09 January 2015) for a second round of intervenor information requests to specifically address issues including ‘Route 1 HDD’ and Route 2 (tunnel) through Burnaby Mountain. This seven month postponement demonstrates that the review timeline can be extended and the Public Hearing delayed for issues the NEB considers relevant, and that time constraints should not impact the ability for the NEB to allow for a true Public Hearing process that includes oral hearings and cross-examination of evidence.

The decision to deviate from the standard Public Hearing process has impacted the opportunity for all intervenors, including the Provincial Government, Local Governments, First Nations and citizens to challenge the applicant’s evidence. The proposal for construction and operation of new facilities, that have much higher human and health risk profiles, speaks to the imperative for a full Public Hearing.

The loss of both oral hearings and cross-examination of evidence in the Public Hearing component of the NEB review of the TMEP significantly erodes the opportunity to test the evidence and question the applicant and its support regarding human health and safety risks, oil spill/accidents risks and emergency response issues, seismic risk impacts, land use impacts, environmental impacts, and socio-economic impacts.

As this decision by the NEB forms a significant departure from its normal procedure and an infringement on the rights of Canadian municipalities and all citizens to have a fair and full public process, and further that it raises an important constitutional issue related to the democratic rights of all Canadians, it is considered that an ‘Emergency Resolution’ to the UBCM is warranted.

The following emergency resolution has been prepared for the consideration of Council:

RESOLUTION: The National Energy Board Public Hearing Process

WHEREAS on 2013 December 16, Kinder Morgan submitted an application to the National Energy Board (NEB) for the Trans Mountain Expansion Project;

AND WHEREAS the NEB has made an arbitrary decision to remove from the standard Public Hearing for a major pipeline project long-standing protocols which provided opportunities for public review through open meetings, oral hearings and cross-examination;

AND WHEREAS the loss of the standard Public Hearing from the application review process constitutes a significant erosion of the democratic rights of Provinces, Territories, Local Governments, First Nations and citizens to cross-examine evidence presented, articulate concerns and voice opposition to applications;

AND WHEREAS the loss of all opportunities for intervenors to participate in oral hearing and to cross-examine evidence within the NEB regulatory review process, has broad social, environmental and economic implications that would impact all local governments and their citizens;

THEREFORE BE IT RESOLVED that the Union of BC Municipalities (UBCM) call on the Federal Government and National Energy Board, through the Federation of Canadian Municipalities and other avenues as appropriate, to oppose the loss of the standard Public Hearing process from the National Energy Board's application review and tribunal process.

AND BE IT FURTHER RESOLVED that the Union of BC Municipalities call on the Provincial and Federal Governments, through their appropriate and respective roles, to develop, in consultation with local governments, first nations, and citizens, the restoration of a full Public Hearing process to the National Energy Board's consideration of all applications.

3.0 UBCM 'EMERGENCY RESOLUTION' PROCESS

UBCM guidelines for submission of an Emergency Resolution submission to the 2014 UBCM Convention provide the opportunity for Council to advance a resolution concerning the NEB Process for consideration. The resolution, if accepted by the UBCM resolutions committee, will be considered at the annual convention scheduled for 2014 September 22 – 26, in Whistler, BC. It is noted that resolutions received after the submission deadline of June 30, 2014 will not be printed in the Resolutions Book and may only be admitted for debate by special motion during the Convention.

The process and guidelines for handling "Emergency Resolutions received after the June 30th deadline include:

- One copy of the resolution and background documentation, in electronic or print form, must be received at the UBCM Richmond office before 12:00 p.m. on Friday, September 19, 2014.
- Resolutions received after the deadline will be examined by the Resolutions Committee and separated into the following categories:
 1. Emergency resolutions recommended to be admitted for debate.
 2. Late resolutions not recommended to be admitted for debate.
- A resolution may be deemed emergency in nature only if the topic has arisen since the June 30th deadline.
- Emergency resolutions may be discussed only after all Section A resolutions have been debated, but not before the time printed in the Convention Program.

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- No other late resolutions will be admitted for debate—they will instead be entered automatically into the resolutions cycle for the following year, starting with consideration by the appropriate Area Association. Referral to the following year ensures that these issues are not lost.


4.0 SUMMARY AND CONCLUSION

This report proposes an Emergency Resolution for submission to the 2014 UBCM Convention on the important issue of the arbitrary cancellation of oral hearing and cross examination of evidence for the Public Hearing process relating to Kinder Morgan's Application to the National Energy Board for Certificate of Public Convenience and Necessity (CPCN) to permit construction and operation of the Project.

It is recommended that Council endorse the Emergency Resolution, as outlined in Section 2.0 for submission to the 2014 UBCM Convention. It is also recommended that staff be authorized to forward a copy of this report, accompanied by supporting background reports and information, to the UBCM and the Federation of Canadian Municipalities. Finally, it is recommended that a copy of this report be circulated to all Burnaby MLAs and MPs for information.



Lou Pelletier, Director
PLANNING AND BUILDING



Leon Gous, P.Eng., MBA
DIRECTOR ENGINEERING



Bruce Rose
CITY SOLICITOR

JW/DD:tn
Attachment

cc: Deputy City Managers
Chief Building Inspector
Chief Librarian
OIC – RCMP

Fire Chief
Director Finance
Director Parks, Recreation and Cultural Services
City Clerk

UBCM RESOLUTION – Adopted by Council March 10, 2014

Comprehensive Pipeline and Energy Transport Plan

***WHEREAS** on 2013 December 16, Kinder Morgan submitted an application to the National Energy Board (NEB) for the Trans Mountain Expansion Project (TMEP);*

***AND WHEREAS** the proposed expansion project in the existing dense urban context represents an intensification of related risks and impacts for Burnaby and the broader Metro Vancouver area, with the benefits distributed elsewhere on a regional, provincial and national basis:*

***THEREFORE BE IT RESOLVED** that the Lower Mainland Local Government Association (LMLGA) and the Union of BC Municipalities (UBCM) call on the Federal Government and National Energy Board, through the Federation of Canadian Municipalities and other avenues as appropriate, to oppose Kinder Morgan's Trans Mountain pipeline system expansion application.*

***AND BE IT FURTHER RESOLVED** that the Lower Mainland Local Government Association (LMLGA) and Union of BC Municipalities call on the Provincial and Federal Governments, through their appropriate and respective roles, to develop, in consultation with local governments, First Nations, and members of the public, a comprehensive pipeline and energy transport plan, including adequately funded provisions for emergency response, for the movement of related goods.*