

IN THE MATTER OF
TRANS MOUNTAIN PIPELINE ULC
TRANS MOUNTAIN EXPANSION PROJECT

NOTICE OF MOTION

Name of person bringing motion: LIVING OCEANS SOCIETY

Decision or order requested: 1. An order granting Living Oceans Society leave to direct information requests to the Province of British Columbia, pursuant to s. 32(1)(b)(ii) of the *National Energy Board Rules of Practice and Procedure*, 1995, SOR/95-208 (the “NEB Rules”).

June 22, 2015

Date submitted



Signature

Dyna Tuytel, Barrister & Solicitor
Representative for Living Oceans Society &
Raincoast Conservation Foundation
Suite 900 – 1000 5th Avenue SW
Calgary, AB T2P 4V1
Tel: 403-705-0202 Fax: 403-264-8399
E-mail: dtuytel@ecojustice.ca

Statement of Facts

1. The deadline for intervenors to submit written evidence to the National Energy Board (the “Board”) in this proceeding was May 27, 2015. The Province of British Columbia (the “Province”) did not submit written evidence.
2. The deadline for intervenors to submit information requests to other intervenors is today’s date, June 22, 2015. Living Oceans Society (“Living Oceans”) wishes to submit information requests to the Province, although it has not filed evidence.
3. Living Oceans has written to the Province today to request its consent to direct an information request to the Province. The letter, and the proposed Living Oceans Society Information Request to the Province of British Columbia (the “proposed Information Request”), are attached to this motion.

Grounds for the Request

4. This motion is made pursuant to Hearing Order OH-001-2014 (Filing ID A3V6I2) (the “Hearing Order”) and s. 32 of the *NEB Rules*.
5. In bringing this motion, Living Oceans relies on subsections 32(1)(b)(ii), 32(2) and 32(3) of the *NEB Rules*.
6. Pursuant to s. 32(1)(b)(ii), a party may direct an information request, within the time limit fixed by the Board, to any other party who has not filed written evidence, with leave of the Board or consent of the party to whom the information request is directed. As the Province has not filed written evidence, Living Oceans is seeking leave of the Board or consent of the Province.
7. Pursuant to s. 32(2), a party seeking leave under s. 32(1)(b) shall file with the Board, and serve on the party to whom it wishes to direct the information request, the proposed information request, and justification for it.
8. Pursuant to s. 32(3), the Board shall not grant leave unless the party to whom the information request is directed has had an opportunity to comment on the proposed information request.
9. Living Oceans has therefore served the Province today, by email, with a letter seeking its consent to respond to information requests from Living Oceans. The letter sets out the justification for the information request, and seeks the Province’s consent on or before July 2, 2015, which is the end of the 10 days the *NEB Rules* provide for responses to

motions. As noted above, the letter and proposed Information Request are appended to this motion. Living Oceans has also filed the proposed Information Request with its other information requests, noting in the cover letter to the information requests that it is seeking consent or leave.

10. By way of justification, Living Oceans submits that its proposed information requests to the Province are highly relevant to the Board's List of Issues for this hearing process.

Specifically:

- the proposed information request no. 1, concerning risk, benefits and costs for British Columbia, and no. 4, concerning the sufficiency of information about Project risks and impacts, are relevant to issues 4 and 5 – the potential environmental and socio-economic effects of the proposed project and of resulting marine shipping activities; and
- the proposed information requests no. 2, concerning marine oil spill response, and no. 3, concerning emergency response plans, are relevant to issues 11 and 12 – contingency planning for spills, accidents or malfunctions during construction and operations, and safety and security during construction and operation, including emergency response planning.

11. By way of further justification, Living Oceans notes the importance of the Board, as well as intervenors, having information from this particular party. In the Province's Application to Participate in this review (Filing ID A3T8U6), it stated that it has a "direct interest in the effect the proposed project would have on the lives of its citizens, including potential environmental, economic, social and health effects", as it is "a representative of all British Columbia residents" in this matter.

12. Furthermore, subsection 52(2) of the National Energy Board Act, RSC 1985 c N-7, provides that "the Board shall have regard to all considerations that appear to it to be directly related to the pipeline and to be relevant, and may have regard to...any public interest that in the Board's opinion may be affected by the issuance of the certificate or dismissal of the application." The answers to the proposed information requests will be highly relevant to the impacts of the Project on British Columbia and its residents, which are relevant and substantial public interests that may be affected by the Project.

Decision Sought

13. Living Oceans therefore requests that the Board grant it leave to direct the appended information requests to the Province of British Columbia, if the Province does not consent to answer same on or before July 2, 2015.