

POLICY ON CONFLICT OF INTEREST AND CONFIDENTIALITY

Effective Date

November 2017

Objective

This Policy will guide members of the Trans Mountain Indigenous Advisory and Monitoring Committee (the “Committee”) including its subcommittees and staff, in preventing, managing and resolving conflict of interest situations and addressing confidentiality issues.

The Committee is intended to form the basis of a new relationship between Indigenous Communities, the Government, and Regulators in respect of the Trans Mountain pipelines and marine shipping. As set out at section 67 of the Committee’s Terms of Reference, the Committee, and the participation of an Indigenous nation or community on it, does not affect or abrogate from any rights under section 35 of the *Constitution Act, 1982*, and are without prejudice to a nation’s or community’s position with respect to the approval of the TMX and the existence of the current Trans Mountain pipeline.

This Policy supports the Committee’s purpose of providing a collaborative forum where information can be shared cooperatively and transparently. It also aims to uphold the integrity of this Committee and the public’s perception of its integrity.

This Policy may adapt and evolve as the Committee adapts its structures and activities. The Committee will review this Policy within six months of the effective date, or sooner as needed.

Application

This Policy is binding upon members of the Committee and subcommittees and any alternate members, as well as staff of the Committee, Indigenous Caucus and the Secretariat. Its terms will also be shared, as appropriate, with invited guests and presenters.

It is acknowledged that this Policy is subject to legislation that may require the disclosure of information that would be otherwise held in confidence pursuant to this Policy. Further, staff of the NEB and government departments must abide by the terms of their employment relationship with their respective employers. Should compliance with these requirements necessitate disclosure of information that would otherwise be kept confidential, the parties agree that only such information as is required to ensure compliance will be disclosed.

Conflict of Interest

Definitions:

- A *conflict of interest* is a situation in which a party has private interests that could improperly influence the performance of his or her role or in which the party uses his or her role for personal gain.
- A *real* conflict of interest exists at the present time.
- An *apparent* conflict of interest could be perceived by a reasonable observer to exist, whether or not it is the case.
- A *potential* conflict of interest could reasonably be foreseen to exist in the future.

Preventing Conflict of Interest:

To help prevent real, apparent or potential conflicts, all parties agree to:

- Act with integrity in performing his or her role with respect to the Committee, subcommittees, Caucus, and Secretariat;
- Never use their official roles to inappropriately obtain an advantage for themselves or to advantage or disadvantage others;
- Take all possible steps to prevent and resolve any real, apparent or potential conflicts of interest between their role and their private affairs and interests;
- Not knowingly take advantage of, or benefit from, information that is obtained in the course of their role that is not available to the public;
- Not grant preferential treatment or advantages to family, friends or any other person or entity; and
- Not accept any gifts, hospitality or other benefits that may have a real, apparent or potential influence on their objectivity in carrying out their role and responsibilities or that may place them under obligation to the donor.

The Committee's Unique Context:

This Conflict of Interest and Confidentiality Policy will be applied with the following factors in mind:

- While all parties are united in their interest to improve the safety of the Trans Mountain pipelines and marine shipping, they also legitimately bring to their work their own perspectives and policy interests.
- While members of the Indigenous Caucus seek to advance the pipeline and marine shipping safety broadly and the interests of affected Indigenous Communities as a whole, they are also appointed by "groupings" of Indigenous nations and communities in order to voice their more local concerns, and formal protocols between the member and particular communities may be put in place to ensure that result. Members of the Indigenous Caucus also belong to, or are employed by, particular Indigenous nations or communities. As a result, members of the Indigenous Caucus may have numerous relationships – including employment, business, political and family relationships – among affected Indigenous nations and communities that may be impacted by the Committee's work. The mere existence of such relationships does not give rise to a conflict of interest for the purposes of this Policy.
- Similarly, government and NEB members have formal reporting relationships with the government departments and bodies they represent, and those departments and bodies may have interests that will be impacted by the Committee's work. The mere existence

of such relationships does not give rise to a conflict of interest for the purposes of this Policy.

- Section 30 of the Committee’s Terms of Reference sets out that “Committee members may recuse themselves where not doing so would create a conflict of interest. This should be done on an exceptional basis only.”
- It is important that Committee and subcommittee members participate in the work of the Committee and/or subcommittees as consistently as possible. When considering whether to recuse themselves, Committee and subcommittee members should consider whether a real, apparent or potential conflict of interest falls outside this general context and presents an exceptional situation that merits recusal. Committee and subcommittee members will also follow the procedure set out below under the heading, “Disclosure and Compliance Measures.”
- This Policy on Conflict of Interest and Confidentiality also applies to staff retained or employed by the Committee, the Caucus and the Secretariat. Such staff may also have particular relationships with Indigenous nations or communities, with government or with others. Staff will disclose any relevant relationships before being retained or employed, and thereafter the mere existence of such relationships will not be regarded as giving rise to a conflict of interest for the purposes of this Policy.

Transparency and Confidentiality

In keeping with sections 7 and 31 of the Terms of Reference, the Committee strives to be transparent in its dealings. As per section 26 of the Terms of Reference, “[n]on-member participants and representatives may, with the consent of the Committee, be invited to attend Committee or subcommittee meetings, including representatives from Indigenous Communities, Kinder Morgan, other federal or provincial departments, ministries or agencies, municipal governments, the Port of Vancouver, and others.”

Committee and subcommittee members and alternate members are presumptively entitled to communicate with their constituencies and the public regarding Committee business. Transparency is a basic principle on which the Committee operates and it is not lightly set aside. A major function of the Committee is to foster better communication between Indigenous Communities, federal departments and the NEB, which depends upon a high degree of transparency.

An exception to the principle of transparency is where the Committee, including its subcommittees and staff, receives confidential information. Such confidential information may be shared with the Committee expressly on the basis that it be treated confidentially, or the context may clearly suggest an expectation of confidentiality, or the nature of the information and the Committee’s purposes may otherwise require it to be kept confidential.

When information is received on a confidential basis, Committee members, subcommittee members, and staff will protect the confidentiality of that information, informed by the considerations set out below. A record will be kept noting what information is understood or deemed to be confidential, and confidential documents will be marked as such.

1. Committee and Subcommittee Members, and Staff

- Committee members include federal government and Indigenous representatives (i.e., the Indigenous Caucus).

- Subcommittee members may include Committee members, representatives from federal government departments, Indigenous Communities, and/or other relevant stakeholders (e.g., Kinder Morgan Canada, Vancouver Fraser Port Authority, etc.).
- Staff include those employed or retained by the Committee, the Indigenous Caucus or the Secretariat.

2. Indigenous Traditional Knowledge

- The Committee, including its subcommittees and staff, are committed to respecting the confidentiality of Indigenous traditional knowledge.
- The Committee’s Terms of Reference specify that one of the Committee’s purposes is “[t]o build an understanding of issues of concern to Indigenous Communities in order to develop a common perspective between the Government, the NEB and Indigenous Communities regarding the TM Activities and to provide informed advice to the Government and the NEB on how to address those issues” (section 6). Those Terms of Reference also state that “[i]n order to fulfill the Committee’s purposes, including the integration of Indigenous perspectives into the regulation of the TM Activities, Indigenous Communities are encouraged to share their perspectives, knowledge and other information with the Committee as they deem appropriate” (section 52).
- Over the months to come, the Committee and subcommittees will actively engage with Indigenous Communities to develop protocols that will help guide the protection of information and knowledge. The Committee and subcommittees will review this Policy within six months, or sooner if needed, and will adjust as required.
- In the meantime, the Committee, including its subcommittees and staff, will treat all Indigenous traditional knowledge – as well as any information where disclosure might risk harming the livelihoods of Indigenous persons – in the following manner, unless the provider of that knowledge either consents to broader disclosure or objects to any disclosure:
 - a) The Committee may disclose the subject matter of the traditional knowledge if in the Committee’s view such disclosure is of real and substantial importance to the protection of the environment or the subject matter of the traditional knowledge.
 - b) In making disclosure pursuant to subparagraph a), the Committee will make its best efforts to disclose the traditional knowledge only in general terms, while withholding those details (such as the identity of the knowledge-holder or a precise location) disclosure of which would be most prejudicial to the knowledge-holder.
 - c) Before making any disclosure, the Committee will make best efforts to contact the knowledge-holder to seek consent to the proposed disclosure. If the knowledge-holder cannot be reached, the Committee will act in accordance with subparagraphs a) and b) and its best judgment. If the knowledge-holder is reached and objects to disclosure, then the Committee will not disclose the traditional knowledge, even in the general terms described in subparagraph b).

3. Kinder Morgan Canada

- No party will knowingly take advantage of, or benefit from, information not available to the public that is obtained from Kinder Morgan Canada (and its subcontractors) in the course of their role as a member or employee.
- All parties will treat information obtained (directly or indirectly) from Kinder Morgan Canada (and its subcontractors) in accordance with the intention of section 54 of the Terms of Reference: “The Committee seeks proactive and productive means to engage with Kinder Morgan and include it in its discussions, as appropriate, with the aim of

promoting continual improvement of its safety culture and performance, and its relations and engagement with Indigenous Communities.”

- No party will disclose to any non-party any information regarding any confidential processes or proprietary information obtained while participating in their respective duties.

4. Invited Guests and Presenters

- Invited guests and presenters will be informed of the Committee’s principle of transparency and will be advised that Committee and subcommittee meetings and business are presumptively public.
- Invited guests and presenters will be asked to note for the Committee or subcommittee if any of the information they wish to share is confidential.
- If an invited guest or presenter requires that some information be kept confidential, the Committee and/or subcommittee may explore whether that guest or presenter would consent to disclosure on a more limited basis that would address the privacy of the information while allowing the Committee or subcommittee to use the information.

Disclosure and Compliance Measures

If members of the Committee, subcommittees and/or staff become aware of a situation involving a conflict of interest and/or confidentiality, or finds himself or herself in a position that could give rise to a real, potential or apparent conflict of interest or breach of confidentiality, the following steps should be taken:

- The party should promptly disclose the situation to the co-chairs of the Committee.
- The co-chairs will make a decision and determine what measures are required.
- This may include, but is not limited to, recusal from any discussion, decision, debate or vote on any matter in respect of which he or she would be in a conflict of interest as per section 30 of the Committee’s Terms of Reference, which states, “Committee members may recuse themselves where not doing so would create a conflict of interest. This should be done on an exceptional basis only.”
- As per section 31 of the Terms of Reference, the Committee strives to make available to the public significant documents relating to its work. Where the Committee, including its subcommittees and staff, determines that certain documents should not be publicly disclosed, it provides reasons upon request.
- All disclosures and compliance will be documented.

Date Approved: November 10, 2017