

VIA FAX

July 27, 2005

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Dear Mr Epp:

**RE: Terasen Pipelines (Trans Mountain) Inc. ("Terasen Pipelines")
TMX - Anchor Loop, Draft Terms of Reference; Our File TM-RG01-02-17**

Terasen Pipelines offers the following comments on the draft 14 June 2005 Terasen TMX - Anchor Loop Terms of Reference (the "draft Terms of Reference").

1. To accurately identify the project proponent, the complete corporate name of Terasen Pipelines should appear in the first sentence of the Introduction on page 1 as follows:

Terasen Pipelines (Trans Mountain) Inc. ("Terasen Pipelines") is planning to expand...
2. It would be helpful to standardise the terminology for referring to the TMX - Anchor Loop Project. Terasen Pipelines suggests that the first sentence of paragraph 2 of the Introduction on page 2 be modified to include the project name from the title page of the draft Terms of Reference followed by defined terms as follows:

The Terasen Pipelines Trans Mountain TMX - Anchor Loop Expansion Project (the "TMX - Anchor Loop" or the "Project") involves...
3. The first sentence of paragraph 2 of the Introduction on page 2 should be corrected to refer to two new pump stations, rather than three.
4. In the draft Terms of Reference there is very little reference to the portions of the Anchor Loop that are within Alberta, but outside Jasper National Park. For completeness, the reference to this segment of the pipeline identified by the italics below could be added to the second paragraph of the Introduction on page 2 as follows:

...and Mount Robson Provincial Park. *The first 16 kilometres of the Project is located in Alberta east of Jasper National Park.* Eighty kilometres of the...

In addition, language similar to that on page 4 of the draft Terms of Reference with respect to land in British Columbia outside Mount Robson Provincial Park could be included on page 4 for Alberta as follows:

For the area in Alberta, but outside of Jasper National Park, the federal National Energy Board process will be followed. Alberta's *Environmental Protection and Enhancement Act* does not apply to this project.

5. At page 9, the draft Terms of Reference refers to the requirements of the *Navigable Waters Protection Act*. Terasen Pipelines is aware of these requirements, but it is normal practice for the level of detail described in the draft Terms of Reference to be provided to the authority responsible for navigable waters subsequent to the completion of the environmental assessment. Therefore, Terasen Pipelines recommends that the second sentence in the fourth paragraph of the draft Terms of Reference be revised to state:

The proponent is to investigate and report on plans and timing to address the following topics.

With this change, the preamble to the list of points related to navigable waters that commences on page 9 would read as follows:

The *Navigable Waters Protection Act* triggers particular requirements for consideration and mitigation to safeguard navigable waters. The proponent is to investigate and report on plans and timing to address the following topics.

6. Part 10 of the draft Terms of Reference requires Terasen Pipelines to summarize the results of the environmental studies, including identifying cumulative residual effects and mitigation measures. However, in the final paragraph it goes on to state as follows:

The Environmental Assessment document authors are not to make conclusions regarding whether 'significant adverse environmental effects' are likely to or are not likely to be caused by the project within Jasper National Park. Parks Canada, as the Responsible Authority for Jasper National Park will provide it's initial conclusions about the likelihood of 'significant' adverse environmental effects to Terasen Pipelines during Terasen's consultation process and will make a final 'determination' in a separate exercise and report. Other responsible authorities will also make their own independent determinations.

Section 20 of the *Canadian Environmental Assessment Act* requires that after taking a screening report into account a responsible authority must determine whether a project is likely to cause significant adverse environmental effects. The Minister is required to make a similar determination under section 23 in the case of a comprehensive study. If the purpose of Part 10 of the draft Terms of Reference is to reflect the responsible authority's Section 20 obligation, it makes a valid point. However, the current draft goes well beyond section 20 and in doing so purports to impose a restriction on the proponent that is both unnecessary and unworkable.

The restriction is unnecessary because opinions dealing with environmental effects in the environmental assessment are not binding on responsible authorities (nor on the Minister in the case of a comprehensive study); they are simply one input among many that should be considered. By purporting to prevent the authors of the environmental assessment from expressing conclusions on significance, Part 10 implies that having these views in the environmental assessment would somehow fetter the responsible authority's decision-making authority, which is not the case. Neither a responsible authority in the case of a screening report, nor the Minister in the case of a comprehensive study is required to accept the views on significance expressed in the environmental assessment.

The restriction is unworkable because the draft Terms of Reference apply to an environmental assessment that will be part of a coordinated Federal environmental assessment process that involves a number of responsible authorities. For example, to meet the requirements of the National Energy Board, Terasen Pipelines is required to identify and evaluate the significance of environmental effects, cumulative effects and residual effects including assessing the significance of effects after mitigation.¹ Part 10 of the draft Terms of Reference would require a separate report to the National Energy Board and potentially other responsible authorities, which would be inconsistent with the intention of a coordinated environmental review and specifically with page 3 of the draft Terms of Reference, which states:

It is anticipated Parks Canada's review will be closely harmonized with the National Energy Board's procedures –
i.e. one environmental assessment review.

In addition, it is difficult to conceive of how the authors of the environmental assessment could properly discuss mitigation measures without forming opinions on significance. One purpose of the environmental assessment is to demonstrate that through mitigation measures an impact that might otherwise have been significant is reduced to "not significant".

In addition to being unnecessary and unworkable in its current form, Part 10 is also discriminatory. The restriction on expressing opinions with respect to

¹ See the National Energy Board's Filing Manual, sections 8.2.5, page 4 A-33, 4 A-37, 4 A-38, 4 A-40 and 4 A – 43.

significance of environmental effects applies only to Terasen Pipelines and not to any other participants in the environmental assessment process, including members of the public.

The intention behind section 20 and section 23 of the *Canadian Environmental Assessment Act* would be captured without the first sentence in the quote from Part 10 that is set out above. Terasen Pipelines recommends that the referenced sentence be removed. In the alternative, the first sentence of the final paragraph of Part 10 could be modified to highlight the distinction between the opinions of the environmental assessment authors and the determinations of responsible authorities or the Minister under the *Canadian Environmental Assessment Act*, as follows:

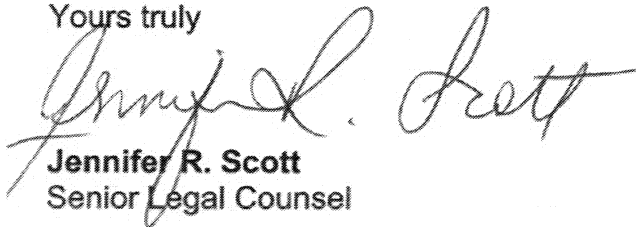
The Environmental Assessment document authors may express their opinions regarding whether 'significant adverse environmental effects' are likely to or are not likely to be caused by the project within Jasper National Park. Parks Canada, as the Responsible Authority for Jasper National Park...

7. While not addressed specifically in the draft Terms of Reference, Terasen Pipelines has been requested to provide a French translation of the Executive Summary of the Environmental Assessment Report and will do so.

Terasen Pipelines, at your request, circulated the draft Terms of Reference to all ENGO stakeholders and First Nations that have been engaged in our consultation program. The draft Terms of Reference was circulated to these parties June 25, 2005 and again on July 18, 2005, and comments were invited to be returned to Terasen Pipelines or the Canadian Environmental Assessment Agency. No comments have been received from any of these recipients.

If you have any questions concerning the forgoing comments please contact the undersigned.

Yours truly



Jennifer R. Scott
Senior Legal Counsel

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