CANADA'S OIL & NATURAL GAS PRODUCERS

November 30, 2021

Attention: Ms. Rumu Sen
Canada Energy Regulator
Suite 210, 517 Tenth Avenue SW
Calgary, Alberta T2R 0A8

Dear Ms. Sen:

Re: Regulatory Proposal – Canada Energy Regulator Cost Recovery Regulations

The Canadian Association of Petroleum Producers (CAPP) has reviewed the Cost Recovery Regulations Proposal ("Proposal") released by the Canada Energy Regulator (CER) on November 1, 2021. CAPP acknowledges and appreciates that the CER has decided to not seek to recover its costs for regulatory oversight relating to frontier activities under the authority of the *Canada Oil and Gas Operations Act* (COGOA) and the *Canada Petroleum Resources Act* (CPRA) at this time. As CAPP noted in earlier feedback in the process, the Frontier region, as defined in these Acts, is an immature resource producing region and is still in an early stage of its regulatory existence in terms of sustained exploration and production. Government financial support is required at this stage.

However, CAPP is of the view that key elements of the Proposal without modification could result in unintended consequences that conflict with the regulatory objectives for equitable, efficient, and predictable cost recovery. The proposed changes to the levies for the small and intermediate oil and gas pipeline companies gives rise to an unmanageable escalation of fees for these companies. We believe this will not be fairly nor effectively mitigated by the revised relief structure.

Therefore, CAPP respectfully submits the following comments on the CER's "Elements and Methodology of the of the Cost Recovery Scheme", as outlined in the Proposal for due consideration prior to drafting the regulations that will be pre-published in the Canada Gazette, Part I, for a 30-day comment period.

A. Recovering costs directly from project applicants who are not currently regulated by the CER and for project applications that are denied or withdrawn.

Regulatory Proposal:

When recovering costs for project reviews (i.e. applications to construct of operate a pipeline, international or interprovincial power line), exclude companies who are regulated by the CER and from whom costs are already recovered based on existing regulated assets. Applicants who are not currently regulated by the CER will pay a non-refundable levy of 0.2 per cent of the construction costs (greenfield levy), which may be adjusted during the course of the application assessment and following construction, if the application is approved. For cost recovery purposes, the new levy would be applied in the same manner as the existing greenfield levy. As the new levy is paid, the costs within the affected commodity pool will be readjusted within the 3 year billing cycle to reflect the addition of the new monies.

CAPP's Comments:

We believe that it is reasonable for the CER to establish regulations to directly recover costs from applicants for the project review related to applications to construct a pipeline, international, or interprovincial power line in circumstances where the company is not regulated by the CER and from whom costs are already recovered based on existing assets. However, if the application is not approved, or is withdrawn by the applicant or is not constructed, the final invoiced levy to the proponent would likely be more reasonable if it was based on the actual cost drivers. For example, the allocated CER staff hours and other directly related costs to review the specific project could be used.

If the actual costs for review are lower than the estimated portion of construction costs, the current proposal potentially creates the risk of a significant and unfair financial burden or barrier for companies that may need to withdraw and revise their applications. In the opposite scenario, if the actual costs for review are higher; then it would be appropriate and fair to the existing companies in the commodity pool to have the CER expenses properly paid by the applicant.

B. Modernizing the fixed levies recovered from small and intermediate companies

Regulatory Proposal:

Levies for large oil and gas pipeline companies are proportionally allocated from a commodity cost pool according to the relative throughput each company has to the total throughput for all companies in that commodity group. The proposed approach is to replace fixed levies for small and intermediate oil and gas pipeline companies with throughput as the metric for determining their costs.

To mitigate situations where oil and gas pipeline companies with one very short CER-regulated pipeline that has extremely high throughput are disproportionally affected, the CER proposes the following: if an oil or gas pipeline company has 10 km or less of CER-regulated pipeline, the company would be expected to pay 5 per cent of their actual throughput cost. All companies with 11 km or more of CER-regulated pipeline are expected to pay the cost of their levy based on throughput.

CAPP's comments:

- The Proposal generates impractical, high increases to the fees paid by small and intermediate companies. This would be a financial burden regardless of if the company had a single shipper and the costs were born by say a producer pipeline owner or whether there was a small multiple shipper base upon which to pass and split costs amongst.
- The recoverable costs for the NEB in 1990 at $25 million has increased by 374 percent compared to the estimate of $118.5 million for the CER's cost in 2021. This increase has been shouldered by the large companies under the existing cost recovery scheme so we do understand the drive to develop a more equitable redistribution of the financial burden to small and intermediate sized companies.
- The added administrative burden on small and intermediate companies being proposed, would exacerbate the problem the CER faces regarding non-remittance and delays in providing data. Furthermore, the cost to the industry for the additional CER staff time and resources to process and ensure compliance is counter-productive and conflicts with the Industry ask for the CER to balance its work with a consideration for cost control.

Table 1

CER Regulated Companies by Commodity and Size

Commodity	Large	Intermediate	Small	Total
Gas	11	9	36	56
Oil	13	5	5	23
Electricity (IPLs)	10	N/A	14	24*
Other Commodities	0	1	7	8
Total	34	15	62	111

*Four small IPLs are exempt from cost recovery

- Removing the fixed levies structure replaces specified costs to the small and intermediate companies and subjects them to the CER's annual true-up and the three-year billing cycle while concurrently creating a greater challenge for the large companies to forecast their operational budget due to the influence of more companies . This is in direct conflict with the CER's Predictability/Certainty and Operational Simplicity objectives.
- Throughput used as the sole metric will not yield a fair and equitable allocation for the CER cost recovery.
    - For example, one would expect that a long pipeline that crosses a variety of terrains would require more regulatory scrutiny than a short pipeline confined to a limited geographic area. So in this circumstance with similar throughput on both pipelines, clearly the short pipeline would be allocated a disproportionately large fee under the Proposal.
    - Cost of service is a suitable metric to establish the thresholds for determining the relative size of a company's pipeline operations
    - It would be more reasonable for small and intermediate companies to be cost recovered in a fixed-fee tiered manner depending on a combination of their specific cost of service and a throughput range. Table 2 shows an example of this concept.

Table 2 Example Fixed Fee Structure Utilizing Throughput for Small and Intermediate Companies

Small companies based on Cost of Service of $1 million or less	
Throughput (m3)	**Fixed Fee ($)**
≤100,000	$1,000
>100,000 and ≤1,000,000	$5,000
>1,000,000	$15,000
Intermediate companies based on Cost of Service of $10 million or less	
Throughput (m3)	**Fixed Fee ($)**
≤1,000,000	$20,000
>1,000,000	$100,000

Notes:
1) COS and throughput basis might be the actual throughput from the previous year to avoid true-up change
2) Throughput thresholds are illustrative only given the sample data provided and should be determined based on the natural categories in the data
3) Fixed fee levels are illustrative only given the fees shown in the Proposal but is capped to avoid a perennial application for Relief.

The following comments provide specific observations on the outcomes of the Proposal for Scenario 1 (Oil Companies) and Scenario 2 (Gas Companies)

Scenario 1 Oil Companies

- The levies applied to large oil companies would decrease by approximately 11 percent at the expense of exorbitant increases in costs to small and intermediate companies. Table 3 below shows that out of the sample oil companies selected randomly by the CER, the minimum increase in costs for an Intermediate oil company would be over 500 percent from the current costs and up to almost 12,000 percent. A short-length pipeline with a cost of service of less than $1 million could potentially realize almost a 28,000 percent cost increase (see Company S).
- 10 out of 23 oil pipeline companies are in the small and intermediate category (See Table 2). So, the Proposal creates a risk of financial strain for the CER costs and removes the absolute certainty that 43 percent of the oil commodity company base previously received and increases the level of uncertainty for the remaining 57 percent, comprised of large companies whose operating budget will now be more impacted by fluctuations in the forecasts and true-ups of many more companies.

Table 3: Oil Pipeline Companies - Current Model Levies vs Projected Throughput Levies in 2021

Companies with Oil Pipelines >11 km	2021 Estimated Throughput (m3)	Operating Length (km)	2021 Current Model Est. Levies ($)	2021 Projected Est. Levies Using Throughput ($)	Change ($)	% Change	% of Cost of Service
Company A	3,133,639	157	$466,829	$414,420	$ (52,409)	-11%	< 2%
Company B	580,304	872	$86,450	$76,745	$ (9,705)	-11%	< 2%
Company C	206,239,901	9,790	$30,724,287	$27,274,999	$(3,449,288)	-11%	< 2%
Company D	9,400,920	1,531	$ 1,400,488	$1,243,261	$ (157,227)	-11%	< 2%
Company E	14,971,834	438	$ 2,230,407	$1,980,008	$ (250,399)	-11%	< 2%
Company F	4,932,581	997	$ 734,824	$652,328	$ (82,496)	-11%	< 2%
Company G	9,556,555	460	$1,423,674	$1,263,844	$ (159,830)	-11%	< 2%
Company H	132,370,000	115	$ 1,971,963	$1,750,579	$ (221,384)	-11%	< 2%
Company I	2,675,600	39	$ 398,594	$353,845	$ (44,749)	-11%	< 2%
Company J	10,328,676	1,875	$1,538,699	$1,365,956	$ (172,743)	-11%	< 2%
Company K	18,287,260	1,333	$2,724,318	$2,418,470	$ (305,848)	-11%	< 2%
Company L	34,390,000	1,233	$5,123,200	$4,548,039	$ (575,161)	-11%	< 2%
Company M	8,530,000	893	$1,270,744	$1,128,083	$ (142,661)	-11%	< 2%

Company N	2,313,733	33	$ 10,220	$305,989	$ 295,769	2894%	3%
Company O	9,210,131	50	$ 10,220	$1,218,030	$ 1,207,810	11818%	12%
Company P	522,274	97	$ 10,220	$69,070	$ 58,850	576%	1%
Company Q	1,044,548	68	$ 10,220	$138,140	$ 127,920	1252%	1%
Company R	9,190,435	43	$ 10,220	$1,215,425	$ 1,205,205	11793%	12%
Company S	1,082,268	38	$ 511	$143,129	$ 142,618	27910%	14%
Companies with Oil Pipelines 10 km	**2021 Estimated Throughput (m3)**	**Operating Length (km)**	**2021 Current Model Est. Levies ($)**	**2021 Projected Est. Levies Using Throughput ($) →**	**Change ($)**	**% Change**	**% of Cost of Service**
Company T	2,611,371	1	511	345,351→ 17,268	$16,757	3279%	1.7%
Company U	621,506	2	511	82,194→ 4,110	$3,599	704%	0.4%
Company V	8,534,018	8	511	1,128,614→ 56,431	$55,920	10943%	5.6%
Company W	290,152	10	511	38,372→ 1,919	$1,408	276%	4%

Scenario 2 Gas Pipeline Companies

- Theoretically large gas pipeline company levies could decrease by 21 percent but an intermediate company costs could escalate up by over 20,000 percent. A small gas pipeline with a cost of service of $1 million potentially faces an outrageous cost increase of over 609,000 percent.
- 45 out of 56 gas pipeline companies are in the small and intermediate category (See Table 2). So, the Proposal generates a financial burden for most companies and removes the absolute certainty for the CER costs that 80 percent of the gas commodity company base previously received and increases the level of uncertainty for the remaining 20 percent, comprised of large companies whose operating budget will now be more impacted by fluctuations in the forecasts and true-ups of many more companies.
- Company Q would be required to pay an even lower fee than the non-onerous $511 for small companies, which is the opposite direction needed to fairly and effectively re-allocate CER fees.

Table 4 Gas Pipeline Companies - Current Model Levies vs Projected Throughput Levies in 2021

Companies with Gas Pipelines >11 km	2021 Estimated Throughput (m3)	Operating Length (km)	2021 Current Model Est. Levies ($)	2021 Projected Est. Levies Using Throughput ($)	Change ($)	% Change	% of Cost of Service
Company A	14,392,793	2,289	3,480,162	2,750,821	(729,341)	-21%	< 2%
Company B	651,287	142	157,481	124,477	(33,004)	-21%	< 2%
Company C	37,076,000	1,062	8,964,937	7,086,146	(1,878,791)	-21%	< 2%
Company D	1,592,718	878	385,117	304,408	(80,709)	-21%	< 2%
Company E	123,630,000	2,470	29,893,600	23,628,769	(6,264,831)	-21%	< 2%
Company F	7,276,000	655	1,759,329	1,390,625	(368,704)	-21%	< 2%
Company G	52,395,000	14,123	12,669,054	10,013,988	(2,655,066)	-21%	< 2%
Company H	22,381,147	2,905	5,411,737	4,277,594	(1,134,143)	-21%	< 2%
Company I	4,134,256	259	10,220	790,159	779,939	7631%	7.9%
Company J	108,704	193	10,220	20,776	10,556	103%	0.2%
Company K	11,076,422	25	10,220	2,116,980	2,106,760	20614%	21.2%
Company L	7,507,292	43	511	1,434,830	1,434,319	280689%	14.3%
Company M	16,288,967	165	511	3,113,227	3,112,716	609142%	31.1%
Company N	857,858	35	511	163,958	163,447	31986%	1.6%
Company O	443,027	30	511	84,673	84,162	16470%	0.8%
Companies with Gas Pipelines >10 km	**2021 Estimated Throughput (m3)**	**Operating Length (km)**	**2021 Current Model Est. Levies ($)**	**2021 Projected Est. Levies Using Throughput ($)**	**Change ($)**	**% Change**	**% of COS**
Company P	624,180	5	511	119,296 → 5,965	5,454	1067%	0.1%
Company Q	34,728	3	511	6,637 → 332	(179)	-35%	0.0%
Company R	497,041	1	511	94,997 → 4,750	4,239	830%	0.0%
Company S	2,067,128	5	511	395,080 → 19,754	19,243	3766%	2.0%
Company T	1,513,334	1	511	289,240 → 14,462	13,951	2730%	1.4%

C. Relief

Regulatory Proposal:

It is proposed that the relief provision process remains the same as described in the Existing Regulations, however the eligibility and criteria for relief would change in the following way:

- The relief provision will apply to all oil and gas pipeline companies with 11 km or more of CER-regulated pipeline as each company will be invoiced on their respective throughputs. Any oil pipeline company or gas pipeline company is not required to pay the portion of a cost recovery charge or administration levy payable that exceeds 2 per cent of the estimate of the rate base for the year in question if:

  (a) In the case of an oil pipeline company or a gas pipeline company, the company files a request for relief with the CER within 30 days after the day on which the CER notifies the company of the cost recovery charge payable by the company in that year; and

  (b) The request for relief includes the company's rate base for that year. As part of its application, the company must file its audited financial statements in accordance with the *Gas Pipeline Uniform Accounting Regulations* or the *Oil Pipeline Uniform Accounting Regulations*, irrespective of whether they have been exempted from doing so by the Commission.

CAPP's comments

- Unmanageable, high fees will trigger applications for relief. After accounting for relief, the non-recovered portion will need to be reallocated to the remaining companies in the commodity pool in an iterative process. Consequently, it is very likely that the larger companies may receive little benefit or a very minimal decrease in the final levies charged compared to the current model with known fixed fees for the bulk of the companies in the oil and gas commodity pool base.
- There is significant administrative burden and additional resource requirements for pipeline companies to file a request for relief, which could be an annual process, and also an unnecessary drain for the CER staff resources.
- Rate base is not a suitable metric for determining the eligibility for relief because it does not account for old, fully or mostly depreciated pipelines that would no longer be required to pay fees or negligible fees but would continue to consume a degree of CER resources. On the opposite end of the spectrum, pipelines with a relatively large remaining rate base may not be eligible for relief even if the allocated CER levy is over 10 percent of their cost of service. **Companies should not be required to pay a portion of cost recovery levies that exceed a nominal percentage (i.e. 2 percent) of their estimated cost of service for the year.** The cost of service basis is more reasonable than rate base.
- Overpayment of the cost recovery obligation was identified by the CER and CAPP as an issue. The need for refunds for companies is much higher given the changed fee structure

for small and medium companies and applications for Relief. CAPP hopes the CER will seek timely authority from the Treasury Board to address issues of significant over payment or relief adjustment circumstances.

D. Cost recovery allocation and methodology approach

As discussed in sections A through C, CAPP has concerns with the implementation of the simple throughput allocation methodology for oil and gas pipeline levies. In its stead, CAPP strongly encourages the CER modernize the fees for small and intermediate companies through updates to the current fixed fee framework with more specific consultation with industry stakeholders. Furthermore, we implore the CER to maintain the use of a nominal percentage of cost of service to determine the threshold for relief applications instead of changing to rate base. With the use of a rate base metric, it is highly possible for unintended cases to arise. Fully depreciated pipelines would not be required to bear any CER costs while a less depreciated pipeline facing astronomical fees may not be eligible for the necessary level of relief to avoid an unmanageable financial burden.

If the CER has any questions about this submission, please contact me and I would be happy to provide further clarity.

Sincerely,

Manager, Markets & Transportation
Canadian Association of Petroleum Producers