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NEB Pipeline Damage Prevention Regulations
Ms. Sheri Young
Secretary
National Energy Board
517-10th Avenue SW
Calgary, AB T2R 0A8

MAIL ROOM
SALLE DE COURIER
2015 NOV 13 P 2:35
NEB/ONE

**Re: Westcoast Energy Inc., carrying on business as Spectra Energy Transmission ("Westcoast")
Comments on Update to the National Energy Board Damage Prevention Regulatory Framework**

Dear Ms. Young:

Spectra Energy writes in response to the October 20, 2015 invitation by the National Energy Board ("NEB" or the "Board") for comments on the proposed updates to the Damage Prevention Regulatory Framework.

Spectra Energy and its affiliates in Western Canada (Spectra Energy Empress L.P., Spectra Energy Midstream Canada L.P., and Petroleum Transmission Company) operate over 7,200 kilometres of gathering and transmission pipelines and 17 natural gas processing plants, as well as natural gas liquids extraction, fractionation, transportation and storage facilities. Spectra Energy shares the Board's commitment to public safety, environmental protection, and respecting the rights of those that may be affected by pipeline operations.

Spectra Energy would be impacted by the proposed updates to the regulations that make up the Damage Prevention Regulatory Framework. These regulations include the:

- *National Energy Board Pipeline Crossings Regulations, Part I;*
- *National Energy Board Pipeline Crossings Regulations, Part II;* and
- *National Energy Board Administrative Monetary Penalties Regulations*

The three main areas of the Damage Prevention Regulatory Framework which the NEB has identified will be updated include modernizing of the regulatory language, amending the regulations to reflect the legislative changes made to the *National Energy Board Act* (the "NEB Act") by the *Pipeline Safety Act*, and amending the regulations to reflect results from the public consultation conducted in September 2014. Spectra Energy understands that updating the referenced regulations is necessary in light of the *Pipeline Safety Act*. However, Spectra Energy finds it difficult to comment without reviewing the proposed draft language. This is particularly problematic in light of the October 20, 2015 letter which

provides only *examples* of the proposed amendments. As the Board can appreciate, the precise regulatory language can have a significant impact on clarity and effectiveness of the damage prevention regulations. Accordingly, Spectra Energy respectfully requests that the Board issue the proposed language as soon as possible, and prior to release of the amendments in the Canada Gazette, Part I, so that Spectra Energy and other industry members can provide substantive comments that will help to ensure that the framework achieves the desired outcomes of safety and environmental protection.

Spectra Energy will take this opportunity, however, to provide a number of general comments on the proposed updates. These comments align generally with those provided by the Canadian Energy Pipeline Association, which Spectra Energy supports.

1. Modernizing the regulatory language

Spectra Energy does not have concerns with modernizing the regulatory language *provided* the changes do not detract from the primary goal of the regulations, which is to protect people and the environment from damage to underground infrastructure. We also expect that the modernization of the language will not decrease the responsibilities of those working near NEB-regulated pipelines. Preventing damage to pipelines must continue to be a shared responsibility.

As noted above, the October 20, 2015 references only one example of the proposed modernizing of the regulatory language. Spectra Energy would appreciate the opportunity to review not only the wording of these amendments but also the wording of any other proposed modernizing changes to the regulations.

2. Amending the regulations to reflect legislative changes made to the *National Energy Board Act* by the *Pipeline Safety Act*.

Removing the term 'excavation' and replacing it with the broader term 'ground disturbance' is not of concern to Spectra Energy as it is required due to the amendments made by the *Pipeline Safety Act*. The term also better aligns with the terminology used in CSA Z247-15.

While the amendment to section 112 of the NEB Act references a 'prescribed area' and enables the Board to make regulations "prescribing the area" for the purposes of subsection 112(1) of the NEB Act, Spectra Energy urges the Board to retain the phrase 'safety zone'. A change from the phrase 'safety zone' to the phrase 'prescribed area' or any other phrase will require significant re-education of the public and stakeholders and changes in communication material. It will also detract from the message that failing to comply with the regulations or company requirements can have serious safety-related consequences. More importantly, however, as an added layer of protection, Spectra Energy strongly recommends that the Board continue to define the prescribed area/safety zone as a set distance from the *edge of the pipeline right-of-way*, and not the pipe or centre line of the right-of-way.

The proposed amendments to identify the measures required to safely cross a pipeline by vehicle or mobile equipment, to construct a facility on, across, along or under a pipeline, or to engage in an activity

that causes a ground disturbance within the prescribed area, are very difficult to comment on without knowing what those specific measures will be. Currently, there is a requirement for any third party constructing a facility on, across or under an NEB-regulated pipeline or engaging in ground disturbance activities to get written permission from the pipeline company. This written permission provided by way of a crossing agreement describes the measures that a third party must take to safely undertake the activities. The regulations also include language relating to permissions. If the proposed amendments enhance these measures, Spectra Energy would be supportive. However, Spectra Energy notes that the required safety measures may vary from company to company and even within a company depending on the asset and location. Accordingly, the specific amendments would have to be reviewed in order to fully understand how the prescribed measures will impact company processes and policies and third parties.

3. Amending the regulations to reflect the results from the September 2014 public consultation period.

The Board's proposed change to require NEB-regulated pipeline companies to have a damage prevention program within their management system is a positive change that will encourage organizations to have clearly defined roles and responsibilities, to understand and monitor risks, and to set a strong foundation for internal stakeholders to collaborate and support improved damage prevention activity. Spectra Energy suggests that the Board reference CSA Z247-15 and the British Columbia Common Ground Alliance *Recommended Practice for Damage Prevention Programs* report in identifying elements that comprise an effective damage prevention program.

The proposed change that requires mandatory membership in one-call centres by NEB-regulated pipeline companies is also a positive change, as are the requirement for third parties to initiate a locate request through their nearest one-call centre and Board enforcement of this requirement.

Including the intent of the NEB's Exemption Order MO-21-2010 (Low Risk Crossings by Agricultural Vehicles) into the regulations may also be a positive change provided the exemption is worded so as not to create confusion and to clearly define the types of agricultural vehicles that are subject to the exemption, with flexibility to accommodate changes to farming practices and equipment. On this latter point, Spectra Energy believes that consultation with affected parties ought to occur to develop a definition of 'agricultural vehicles' that are subject to the exemption because some equipment used to perform agricultural activities have potential to damage underground infrastructure.

In closing, Spectra Energy would like to thank the Board for the opportunity to comment on the proposed updates and looks forward to the opportunity to comment on the draft language.

Yours truly,



Rachel Kolber