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13 November 2015

Ms. Sheri Young  
Secretary of the Board  
National Energy Board  
517 – 10 Ave SW  
Calgary AB T2R 0A8  
Dear Ms. Young:

**Re: Amendments to the NEB’s Damage Prevention Regulations**

On behalf of TransCanada PipeLines Limited (TransCanada), I am respectfully submitting comments regarding the National Energy Board’s (NEB) proposed *Amendments to the NEB’s Damage Prevention Regulations* issued on 20 October 2015.

TransCanada is committed to being an industry leader in safety, security of people and the protection of the environment and property. We believe excellence in these practices is vital to the well-being of all people everywhere and essential to all aspects of our business. We follow principles which guide and measure our corporate goals and objectives in these areas and we are committed to continuously improving our safety and environmental protection performance. TransCanada’s priority is to ensure our pipeline systems are safe and reliable. For these reasons, the proposed amendments are of much interest to TransCanada.

As a member of Canadian Energy Pipeline Association (CEPA), TransCanada supports the comments in CEPA’s letter to the NEB regarding the proposed amendments. TransCanada and other CEPA members continue to learn from each other and this has helped make Canadian pipelines safe and will continue to make pipelines safer.

TransCanada, in the Attachment to this letter, has provided comments on each of the individual elements of the updated framework document.

While appreciating this opportunity, TransCanada further encourages the NEB to release a full updated package of proposed regulatory amendments for comment prior to any publication in the Canada Gazette Part I. In particular, TransCanada requests that the NEB provide a comprehensive update to the set of proposed regulatory amendments that were previously released for comment on 18 September 2014.

Yours very truly,  
**TransCanada PipeLines Limited**

*Original signed by*

Dave Murray, P. Eng.  
Manager, Canadian Regulatory Compliance

**TransCanada Comments on the NEB's Proposed Amendments to the NEB's  
Damage Prevention Regulations (October 2015)**

**1. Modernizing the regulatory language.**

TransCanada supports modernizing the regulatory language provided the revisions add clarity for both pipeline operators and third parties, and do not compromise the intent of the regulations.

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

**a. removing the term 'excavation' and replacing it with the broader term 'ground disturbance'.**

TransCanada supports the replacement of the term "excavation" with the term "ground disturbance". TransCanada further supports defining "ground disturbance" to align with the definition used in CSA Z247-15; that definition is provided here for ease of reference:

***Ground disturbance** — any work, operation, or activity on or under the existing surface resulting in a disturbance or displacement of the soil or ground cover.*

*Notes:*

- 1) *Ground disturbances can include, but are not limited to, the following:*
  - a) *digging;*
  - b) *excavation;*
  - c) *trenching;*
  - d) *ditching;*
  - e) *tunnelling;*
  - f) *boring/drilling/pushing;*
  - g) *augering;*
  - h) *topsoil stripping;*
  - i) *land levelling/grading;*
  - j) *plowing to install underground infrastructure;*
  - k) *tree planting;*
  - l) *clearing and stump removal;*
  - m) *subsoiling;*
  - n) *blasting/use of explosives;*
  - o) *quarrying;*
  - p) *grinding and milling of asphalt/concrete;*
  - q) *seismic exploration;*
  - r) *driving fence posts, bars, rods, pins, anchors, or pilings; and*
  - s) *crossing of buried pipelines or other underground infrastructure by heavy loads off the travelled portion of a public roadway.*
  
- 2) *For the purposes of this Standard, the definition of "ground disturbance" does not include agricultural cultivation to a depth less than 450 mm that does not reduce the cover over the underground infrastructure.*

**b. defining the term ‘prescribed area’ in which unauthorized ground disturbances are prohibited.**

TransCanada does not support introducing the term “prescribed area” to the area in which unauthorized activities are prohibited.

TransCanada recognizes the efforts of the NEB to modernize the regulatory language regarding ground disturbance activities to create clarity. However, TransCanada is concerned that including “prescribed area” may create unintended ambiguity, which in turn, could create unintended risk to the safety of pipelines, people and the environment. To this end, TransCanada urges the NEB to retain the same 30-metre zone Safety Zone terminology in its Damage Prevention Regulations, again measured perpendicularly from either side of the pipeline easement (and not from the edge or centre of the buried pipe).

TransCanada believes that changing the name or changing the characteristics of the Safety Zone could lead to confusion among the vast array of stakeholders who have been educated on this subject over the course of decades.

- c. identifying the measures required to be met in order to safely construct a facility on, across, along or under a pipeline or engage in an activity that causes a ground disturbance within the prescribed area.**
- d. identifying the measures to be met in order to safely cross a pipeline by vehicle or mobile equipment.**

In response to both parts c. and d., TransCanada supports these clarifications. Any changes to modernize these concepts should strengthen the current language, including referring to the use of agreements to characterize these concepts between pipeline operators and third parties that wish to construct facilities on, across, along or under a pipeline, or, where agreements do not apply, the actions required to engage in an activity that causes ground disturbance within the Safety Zone. TransCanada uses agreements with third parties that define the mutual rights and obligations of each party.

**3. Amending the regulations to reflect the results from the last public consultation period conducted in September 2014.**

- a. a damage prevention program requirement to the Onshore Pipeline Regulations for NEB-regulated pipeline companies to develop, operate and maintain within their management system.**

Third-party damage is one of the leading causes of pipeline failures. TransCanada supports the requirement to have a damage prevention program element in the management system requirements of the NEB Onshore Pipeline Regulations. TransCanada recommends that a damage prevention program should include all elements contained within the CSA Z247-15 Standard. Further, TransCanada notes that under current NEB audit protocols pipeline crossing and public awareness are separated. TransCanada believes that public awareness is a fundamental element within any damage prevention program and should not be segmented out of a damage prevention program.

- b. a requirement for third parties to initiate a locate request with their local one-call centre before commencing any ground disturbance (PCR I).**

TransCanada supports the requirement for all third-parties to initiate locate requests with their local one-call centre before commencing any ground disturbance activity. The NEB should enforce this requirement, and support industry’s Public Awareness activities in this regard.

- c. a requirement for NEB-regulated pipeline companies to be members of one-call centres where they operate a pipeline (PCR II).**

TransCanada supports this recommendation. TransCanada is a member of one-call centres in the jurisdictions in which it operates.

- d. the intent the NEB's Exemption Order MO-21-2010 (Low Risk Crossings by Agricultural Vehicles) into the regulations.**

TransCanada is supportive of the NEB exempting "low risk crossings by agricultural vehicles". TransCanada recommends that the exemption is written carefully to ensure clarity by stakeholders. Further, TransCanada recommends that agricultural vehicles need to be defined to provide greater clarity for stakeholders.

## **Conclusion**

TransCanada recognizes the NEB is in a unique position to provide the leadership necessary among regulators of buried pipelines in Canada with respect to the development of a robust damage prevention framework. TransCanada strongly encourages the NEB to consider the following:

- Draft wording of the proposed changes for review and comment should be made available prior to publishing in the Canada Gazette Part I in order to ensure affected stakeholders are effectively consulted. TransCanada believe this could be accomplished through presentation of a comprehensive update to the set of proposed regulatory amendments that the NEB previously released for comment on 18 September 2014.
- Develop goal oriented regulations for pipeline companies and outline specific regulatory requirements for third parties involved with pipeline crossings and encroachments.

TransCanada thanks the NEB for the opportunity to provide these comments and looks forward to working collaboratively as the NEB moves forward with the development of damage prevention regulations.