

December 18, 2013

**NOPRC 2013-01 NEB Damage Prevention Regulations**

Sheri Young, Secretary of the Board  
National Energy Board  
444-7<sup>th</sup> Avenue S.W.  
Calgary, AB T2P 0X8

Dear Ms. Young:

**RE: Notice of Proposed Regulatory Change (NOPRC) 2013-01 – Damage Prevention**

I am landowner in Manitoba, Canada and was very disappointed to see the NEB's Notice of Proposed Regulatory Change for the Damage Prevention Regulations. I am disappointed, because it is clear that the NEB is still not listening to landowners when it comes to the unfairness in Section 112 of the NEB Act. Many of us wrote to the NEB earlier this year in response to the Discussion Paper – Proposed Changes to NEB Regulations for Damage Prevention. We proposed regulatory changes that would put the responsibility for pipeline safety squarely on the shoulders of pipeline companies, and not on landowners. The NOPRC prepared by the NEB suggests that none of our concerns will be addressed in the draft regulations being prepared.

The NEB got it right when it said that pipeline landowners should not be responsible for the costs of pipeline abandonment. The NEB needs to commit to that same principle in regulating the operations and maintenance of Canada's aging and inadequately constructed pipeline system. For landowners, Section 112 is nothing more than a gift to pipeline companies allowing them to shift the cost of maintaining their deficient pipelines to the landowners who make their living from the land. The Damage Prevention Regulations should be designed to correct this power imbalance. Further, the Damage Prevention Regulations, as proposed, don't give affected landowners the same opportunity for success as those landowners without pipelines. Those lost opportunities for success then benefit the pipeline company. This is not justice.

As landowners and landowner associations have written before, the new regulations must be designed to exempt landowners from consent requirements for agricultural activities while at the same time ensuring safety through proactive management by pipeline companies. An effective damage prevention program is one that monitors the condition and location of the pipeline and that maintains the pipeline so as to ensure at all times that farming practices can be undertaken safely and without damage to the pipeline. The pipeline must be maintained so as to accommodate agricultural operations.

Section 112 created problems for landowners that need to be solved. Further, these and other regulations should have been and should continue to be grandfathered on those lands which are and will be affected by regulatory change since the time of land rights acquisition (past

easement) Further still, who at the NEB decides that there is a need for regulatory change? Who directed the Board to initiate the process of change? Is the Board in possession of information that indicates that there are sections of pipelines or pipelines themselves that are in such poor condition in Canada that would require regulatory change? Will those members of the Board who make those decisions, make themselves known, as judges do in decisions rendered at a hearing, and would they be accountable for those decisions to the public? What credentials do those decision makers have to make those decisions? The Comment to the Notice of Proposed Regulatory Change to the Damage Prevention Regulations are providing me with an opportunity to have these questions answered.

The NEB is being provided with an opportunity to solve one of many problems faced by pipeline landowners by ensuring that pipelines don't interfere with farming operations and that landowners don't face fines and imprisonment for farming their lands. We hope that by the time the draft regulations are released, the changes landowners are looking for will have been adopted by the NEB.

I await your response.

Sincerely,

Gerry Demare  
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