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Rumu Sen
Regulatory Policy, Integrated Energy Information and Analysis
National Energy Board
517 10 Ave SW
Calgary, AB

14 February 2018

Dear Ms. Sen,

RE: Regulations Respecting Cost Recovery for Governor in Council Designated Companies

The Canadian Energy Pipeline Association (CEPA) would like to thank the National Energy Board (NEB) for the opportunity to provide input regarding the proposed design of regulations for recovering amounts paid out of the Consolidated Revenue Fund (CRF), when a company has been designated by the Governor in Council (GIC) following failure to fully address an unintended or uncontrolled release. CEPA and its members are encouraged by the level of engagement that has taken place on regulations pursuant to the *Pipeline Safety Act* and have, and will continue to, participate in consultations with the NEB and other relevant government bodies. This engagement includes consultations regarding the *Pipeline Financial Requirements Regulations* which have yet to be finalized. These two sets of regulations will need to be aligned in order to ensure there is an effective and efficient regulatory scheme in place that meets the objectives of the *Pipeline Safety Act*.

CEPA and its members appreciate the NEB's efforts to develop a cost recovery model which affirms the polluter-pays principle and seeks first to recover any and all moneys expended by the Government of Canada in respect of a designated company from that designated company. In the event the Governor in Council designates a responsible company and that company is unable to cover the costs incurred by the NEB in that circumstance, there would necessarily be a departure from the polluter pays principle. CEPA understands that the Board would only rely on the cost recovery scheme when recovering costs from a designated company cannot be achieved.

In these circumstances, the proposed cost recovery approach that is similar to the NEB cost recovery methodology represents one alternative that would recover such costs from pipelines transporting the same commodity. However, CEPA submits that alternate cost recovery approaches should be considered. Under the current *NEB Cost Recovery Regulations* (for recovery of operating costs), small and intermediate pipeline companies are subject to a threshold test and are charged a nominal fixed fee based on size. The remaining operating costs to be recovered are then allocated to the larger pipelines based on throughput. The draft regulations are; however, unclear as to how costs would be recovered from smaller companies such that it is unclear whether the proposal would result in an equitable cost allocation. CEPA looks forward to further discussions with the NEB to explore other cost recovery options that are fair and broad-based.

Further to the above, CEPA recommends the following be included in the regulations, or that some additional guidance documents be provided, to provide clarity for all stakeholders:



1. A definitive statement that costs imposed on third party pipelines as a result of a designated company event are a legitimate cost of service item and are recoverable from shippers.
2. Requirements regarding costs incurred in a designated company scenario in order to ensure they are incurred prudently prior to being recovered from other companies. For example, third party pipeline companies, on behalf of their shippers and/or shareholders, should have the ability to audit or challenge both the steps taken (legal and otherwise) to ensure every reasonable avenue has been pursued to recover the costs from the Designated Company and its assets and the actual costs allocated to them as a third party in order to ensure that such costs are prudent.
3. More consideration with respect to how the cost recovery scheme would work in the context of bankruptcy proceedings. Guidelines or additional clarity around the designated company process will provide pipeline companies with the opportunity to better anticipate what, if any, requirements may be placed upon them in a designated company event.
4. Add clarification around the "minimum 5% of revenue" clause. In some cases 5% of total revenue may be higher than their total spill cost allocation. This is implied in the tables, but not explicitly stated.

Thank you again for the opportunity to provide input into this regulatory proposal. Please contact Kai Horsfield at khorsfield@cepa.com or by phone at 403.221.8755 if you have any questions or concerns regarding the above remarks.

Yours sincerely,

Cathy Hay
Director, Regulatory and Business Environment

cc: Christine Siminowski, Director, Energy Systems Management, Energy Sector