



File OF-Surv-AMP-2015-010  
2 March 2016

## LETTER DECISION

Mr. Guy Jarvis  
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Facsimile 403-231-3920

Mr. Robert Steedman  
AMP Officer  
National Energy Board  
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Ms. Samantha Wahl-Hrdlicka  
Senior Legal Counsel  
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Calgary, AB T2P 3L8  
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Dear Messrs. Jarvis and Steedman and Ms. Wahl-Hrdlicka:

**Enbridge Pipelines Inc. (Enbridge)  
Request for Review AMP-010-2015  
National Energy Board (NEB or Board) Letter Decision**

The Administrative Monetary Penalty (AMP) Officer issued Notice of Violation (NOV) AMP-010-2015 to Enbridge on 2 June 2015 in the amount of \$52,000 for failure to comply with section 4 of the [National Energy Board Onshore Pipeline Regulations](#). On 30 June 2015, the Board received Enbridge's Request for Review of the penalty amount pursuant to section 144 of the [National Energy Board Act](#) (NEB Act). It did not challenge the facts of the violation.

The Board issued a letter on 17 July 2015 setting out the process steps through which the review would be considered. In accordance with this process, the Board is in receipt of Enbridge's submissions dated 31 August 2015 and 30 October 2015. The Board has also received the materials included in the AMP Officer's Disclosure Package, as well as its submission dated 29 September 2015.

Enbridge submits that the amount of the penalty was determined by the AMP Officer without having regard to the circumstances of the violation as required by subsection 4(2) of the *Administrative Monetary Penalties Regulations (National Energy Board)* (AMP Regulations).

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Specifically, Enbridge takes issue with the gravity value assigned to item 5 (whether the person provided all reasonable assistance to the Board with respect to the violation) and item 9 (whether there are any other aggravating factors in relation to the risk of harm to people or the environment).

### **Item 5**

Enbridge submits that it should have been assigned the maximum possible mitigating factor of “-2” in respect of this item since it provided all reasonable assistance to the Board with respect to the violation. Enbridge also asserts that the disclosure provided by the AMP Officer was incomplete in that it did not include certain records that demonstrate the assistance it provided.

The AMP Officer submits that applying a factor of “-1” was appropriate because Enbridge was not fully proactive in its disclosure and only provided key information to the Board related to the violation after being requested to do so. In respect of the Disclosure Package, the AMP Officer submits that it is not required by the NEB Act or the AMP Regulations to consider and disclose every document that relates to the non-compliance that resulted in the issuance of the NOV.

The Board finds that the Disclosure Package was complete as the documents attached to Enbridge’s 31 August 2015 submission did not provide new information sufficient to support the application of a lower gravity value. The Board also finds that the evidence does not support the AMP Officer’s contention that Enbridge withheld information until it was specifically requested.

The Board expects regulated companies to cooperate with the Board, provide timely and complete responses to information requests and be forthcoming with information, as Enbridge was in this case. The Board considers assignment of a gravity value of “-1” to be appropriate where regulated companies meet these expectations. A gravity value of “-2” is reserved for cases where a company has taken extraordinary measures to assist the Board. Accordingly, the Board has decided to uphold the AMP Officer’s assignment of a gravity value “-1” in this case.

### **Item 9**

Enbridge submits that a gravity value of “+1”, rather than “+2”, should have been applied for this item. It asserts that the Board did not consider information related to the lack of action on the part of the Department of Fisheries and Oceans (DFO) and Alberta Environment and Sustainable Development (AESRD) when assigning a gravity value for this factor and that it should have done so given that these governmental departments have the relevant subject matter expertise.

The AMP Officer responded that it is not required to take into account the views of other governmental departments. The AMP Officer also disagreed with Enbridge’s interpretation that DFO and AESRD did not act because they considered that this was not an event of concern.

The AMP Officer’s cover letter to the Disclosure Package indicates that the package includes all the evidence used to prepare the NOV. While the correspondence between Enbridge, DFO and AESRD attached to Enbridge’s 31 August 2015 email was not previously in the Board’s possession, Enbridge provided evidence as to the contents of that correspondence in responses to information requests included in the Disclosure Package. Accordingly, the Board does not accept

Enbridge's assertion that the AMP Officer did not consider the evidence as to the DFO and AESRD response.

The AMP Regulations stipulate that item 9 is an aggravating factor that can be assigned a gravity value of "0", "+1", "+2" or "+3". In considering the possible range of actual or potential harm to people or the environment, the Board has concluded that the circumstances of this incident and the resulting harm do not warrant the gravity value assigned. While the violation resulted in fish mortalities, an environmental impact that is unacceptable in light of the Board's requirements concerning environmental protection, and resulted in this penalty being levied, the Board notes that Brook Stickleback and Fathead Minnow are prolific in Western Canada and are not species of concern. In addition, the Board is of the view that the fish mortalities in this case would have minimal environmental impact and do not constitute "serious harm to fish" as set out in section 35 of the *Fisheries Act*. Accordingly, the Board has decided to change the gravity value for this factor to "0".

### **Correction of the Penalty Amount**

As discussed above, the Board finds that the amount of the penalty for the violation was not determined in accordance with the AMP Regulations. The amount of the penalty for AMP-010-2015 is therefore corrected to 28,000.

[REDACTED]

C.P. Watson  
Presiding Member

[REDACTED]

R.R. Wallace  
Member

[REDACTED]

D. Hamilton  
Member