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National Energy Board  
Suite 210, 517 – 10th Avenue SW  
Calgary, AB T2R 0A8

**Attention: Sheri Young, Secretary of the Board**

Dear Ms. Young,

**Re: National Energy Board Designated Company Cost Recovery Regulations**

Enbridge Inc. (“Enbridge”) thanks the National Energy Board (“NEB”) for the opportunity to provide input on the draft *Designated Company Cost Recovery Regulations* (Regulations). Enbridge, through its NEB-regulated oil and gas pipeline subsidiaries, has been an active participant in reviewing and commenting on the *Pipeline Safety Act* and fully expects to continue to participate in consultations with the NEB and other relevant bodies.

Under the current *NEB Cost Recovery Regulations*, NEB-regulated pipeline companies are required to pay annual cost recovery charges to the NEB. Pursuant to those regulations, Enbridge’s NEB-regulated pipeline subsidiaries provide nearly half of all NEB operating cost recoveries on an annual basis. Additionally, a single subsidiary of Enbridge, Enbridge Pipelines Inc., currently accounts for the majority of the NEB operating cost recoveries attributable to all crude oil pipelines. Accordingly, Enbridge has a significant interest in the development of prudent, fair and reasonable Regulations.

Prior to finalizing the Regulations, Enbridge encourages the NEB to ensure that the proposed regulations are aligned with the *Pipeline Financial Requirements Regulations*, once those are finalized and in force. 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*.

Enbridge, consistent with its Canadian Energy Pipelines Association peers, advocates a cost recovery model which affirms the polluter pay 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. Although not explicitly stated in the *Pipeline Safety Act* itself, Enbridge commends the NEB on including in the Regulatory Proposal criteria guiding the NEB which provide that “to the extent possible, costs should be recovered first from the certificate holder under the *NEB Act* for the pipeline from which the release occurred (i.e. the designated company)”. Such an approach alleviates a great deal of the concerns regarding moral hazard that Enbridge had in regard to the wording in the *Pipeline Safety Act*.

Enbridge does, however, have concerns with significant aspects of the Regulations.

### ***Proposed Recovery Method***

It is unclear to Enbridge why the Regulations propose a recovery method based on the revenue that the NEB receives from its regulated pipeline companies to fund its operations (i.e. recoveries). The allocation of NEB operating costs uses the time spent by NEB personnel on oil, gas and other activities to allocate its costs to commodities, and then uses throughput for the larger pipelines as the basis of allocating its costs to each NEB-regulated pipeline company. Small and intermediate pipeline companies (as defined by the *NEB Cost Recovery Regulations*) are subject to a threshold test and are charged a nominal fixed fee based on size. Although this allocation method may be reasonable for the recovery of the NEB's operating costs, it is not at all clear what principle of cost allocation is upheld or met by using the same method to allocate designated company costs. Simply requiring the largest oil and gas pipelines, and their shippers and shareholders, to bear the brunt of costs under a designated company scenario is neither consistent with sound cost allocation principles nor is it reflective of appropriate cost drivers for this unique cost.

Enbridge remains concerned that the proposed cost allocation approach still allows for an unnecessary degree of moral hazard. (By moral hazard, Enbridge is referring to the lack of incentive to guard against risk where one is protected from its consequences). To illustrate this concern, Enbridge examined the allocation of costs among NEB-regulated crude oil pipeline companies. The NEB regulates over 30 crude oil and liquids pipeline companies.<sup>1</sup> Yet, for purposes of allocating the NEB's operating costs, only a few of those pipelines are allocated such costs, with the remainder charged a nominal fee. If those pipeline companies that are charged a nominal fixed fee are at risk of causing a designated company event, they arguably should not be limited to a nominal amount of cost recovery for designated company purposes. While Enbridge does not have an alternative designated company cost recovery method to propose at this time, Enbridge encourages the NEB to work with industry to arrive at a cost allocation formula that is broad-based and more reflective of appropriate cost drivers. Enbridge's NEB-regulated subsidiaries and affiliates are willing to work with the NEB on such a process.

### ***Allocated Costs Ought to be Included in a Pipeline's Cost of Providing Service***

Enbridge is of the view that the Regulations should provide clarity and certainty that costs imposed on a third party pipeline as a result of a designated company release are a legitimate cost of operating an NEB-regulated pipeline and are fully recoverable under cost of service arrangements or through toll settlements. Enbridge views the *Pipeline Safety Act* as compelling NEB-regulated pipeline companies to participate in a pooling of risk arrangement, and accordingly, any remediation or similar costs charged to third party pipelines are unavoidable, non-discretionary and necessary to operate as an NEB-regulated pipeline company. Accordingly, such costs are a legitimate cost of doing business and therefore should be recoverable. Enbridge submits that the Regulations or any related NEB guidelines ought to include wording to that effect.

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<sup>1</sup> Canada's Pipeline Transportation System – 2016, at p. 30: <https://www.neb-one.gc.ca/nrg/ntgrtd/trnsprttn/2016/cnds-ppln-trnsprttn-system-eng.pdf>

### ***Risks of NEB-Regulated Pipelines***

Under the *Pipeline Safety Act*, based on this proposal, Enbridge's affiliated companies (either as NEB-regulated pipelines or as shippers) will now have the largest financial exposure relative to all other NEB-regulated oil and gas pipelines. Accordingly, as ratings agencies and financial analysts reassess Enbridge's risk, it is unclear to Enbridge what process the NEB has in mind to allow Enbridge and others to make their own risk assessments regarding potential financial exposures they may have. What assurances will the NEB provide of the financial standing, sufficiency of financial resources and operational practices of its regulated companies? Finally, will the NEB enhance its enforcement mechanisms to ensure ongoing financial viability of pipeline companies?

### ***NEB's Process & Prudent Costs***

Of further concern to Enbridge is the fact that the Regulations are completely silent on any requirement for thoroughness of efforts to fully recover costs from a designated company or prudence of costs incurred in a designated company scenario. What assurances do pipeline companies have that costs incurred are prudent or legitimate? Will third party pipeline companies, on behalf of their shippers and shareholders have the right to audit 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? Will third party pipeline companies, on behalf of their shippers and shareholders, have the right to audit or challenge costs allocated to them as a third party to ensure such costs are prudent? Enbridge also believes that the operations cost recovery invoices must be kept separate from any invoicing related to these Regulations. These are critical issues that require clarity.

Lastly, Enbridge believes some understanding of the process that the NEB would be expected to implement to manage a designated company scenario would be of value to all concerned. Although such a designated company event is not something Enbridge would expect to plan for in the normal course, guidance from the NEB about its expectations and process for managing a designated company event would be informative and useful.

Enbridge recognizes that the intent of the Regulations is primarily to address the basis of allocation of costs incurred under a designated company scenario. However, Enbridge is of the view that there are significant issues related to process and prudence to warrant additional discussion and guidance. Enbridge appreciates the opportunity to comment on the Regulations and welcomes the opportunity to discuss any of its concerns further.

Sincerely,

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Guy Jarvis  
Executive Vice President and  
President of Liquids Pipelines