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

May 15, 2018

Dear Ms. Sen;

The Canadian Energy Pipeline Association (CEPA) appreciates the opportunity to provide further comments on one possible cost recovery approach in the event that the National Energy Board (NEB) incurs costs related to designated companies under section 48.16 of the *National Energy Board Act* (NEB Act). The NEB's Regulatory Proposal for designated company cost recovery proposed that the NEB Cost Recovery Regulations would provide the basis for the allocation of charges. CEPA, in its comments provided on February 14, 2018, suggested that other approaches should be explored.

Our concerns with applying the existing NEB cost recovery framework are that the vast majority of costs are recovered from a few large companies and that the relatively small amounts payable by small and medium companies have been fixed at the same level for decades. In contrast, over the last few years, NEB costs have increased substantially (approximately tripled in the last decade) virtually all of which have been paid by larger companies. This concern is heightened in the context of designated companies. Given the new financial requirements in the *NEB Act* requiring pipeline companies to maintain financial resources (e.g. \$1 billion for companies authorized to transport 250,000 or more barrels of oil per day), larger companies are less likely to become designated pursuant to the Act. Smaller companies that do not have the same type of financial resource requirements are more likely to be designated, which should be recognized and emphasized under the final approach for cost recovery.

CEPA nonetheless believes that the above could be addressed through two relatively simple adjustments to an updated NEB cost-recovery framework, while continuing to rely on the fundamental underlying framework.

First, the total amounts to be recovered should be based on actual costs that are prudently incurred rather than a forecast of costs as is the case under the existing NEB cost recovery framework. This is supported by the nature of the potential costs and the unknown frequency with which they may be triggered or their magnitude in a given year.

Second, there should not be a fixed amount defined for recovery from small and medium companies with the residual to be paid by large companies. Rather, when the NEB incurs costs related to designated companies and seeks to recover these costs, it should define the share to be recovered from small, medium and large oil or gas companies at the same time. The share to be recovered from small and medium companies should be proportionate to the benefit those companies receive from having large pipeline companies act as payer of last resort.



The share could also vary based on a number of factors. For example, there could be a sliding scale depending on the incurred amounts that are to be recovered. If the amount is minimal (e.g., less than \$500,000), invoicing numerous small oil or gas companies may not be practical, such that all costs could be recovered from large companies. Above a certain threshold, costs should be allocated between small, medium and large pipeline companies¹ (e.g., 50% to small and medium pipeline companies based on per company share/50% to large companies based on the same allocation used for the existing NEB cost recovery framework). In addition, above a certain amount, it may be appropriate to amortize recovery over multiple years (e.g., \$10 million/year limit).

It is worth noting that CEPA's comments are focused on the conceptual approach to cost recovery. The various thresholds and allocation percentages provided above are for illustrative purposes only and should be established through further consultations with NEB regulated companies.

As highlighted earlier in this letter, the existing NEB cost recovery framework has not been updated in over a decade even though the NEB's operating costs have approximately tripled over that timeframe. In CEPA's view, a review of the NEB cost recovery framework is warranted and should be initiated in a timely fashion. To the extent the approach to NEB cost recovery is revised in the future, it would also be beneficial to re-assess cost recovery of designated companies' costs to ensure the framework remains administratively efficient and cost effective.

CEPA believes that with these conceptual adjustments an updated NEB cost recovery framework could be adapted to provide a reasonable and fair recovery of designated companies' costs that better aligns with the unique nature of these costs and while abiding by cost causation and appropriate and fair cost allocation principles. It also provides the opportunity for the cost recovery scheme to be administratively efficient and cost effective by borrowing from the fundamental components of the updated NEB cost recovery framework.

CEPA appreciates the opportunity provided by the NEB in relation to this matter and looks forward to ongoing discussions and consultations that are expected to follow.

Yours sincerely,

Kai Horsfield
Manager, Regulatory and Policy

¹ As defined in National Energy Board Cost Recovery Regulations – Section 2 Interpretation