

February 14<sup>th</sup>, 2018

Designated Company Cost Recovery Regulations  
National Energy Board  
Suite 210, 517 Tenth Avenue SW  
Calgary, AB T2R 0A8

### **NEB regulatory proposal on the designated company cost recovery regulations**

The Canadian Association of Petroleum Producers (CAPP) represents companies, large and small, that explore for, develop and produce natural gas and crude oil throughout Canada. CAPP's member companies produce about 80 per cent of Canada's natural gas and crude oil. CAPP's associate members provide a wide range of services that support the upstream crude oil and natural gas industry. Together CAPP's members and associate members are an important part of a national industry with revenues from oil and natural gas production of about \$110 billion a year.

CAPP appreciates the opportunity to comment on the proposed designated company cost recovery regulations for recovering amounts paid out by the Consolidated Revenue Fund (CRF), when a company has been designated by the Governor in Council (GIC), following an unintended or uncontrolled release.

CAPP members operate onshore NEB-regulated pipelines across Canada. These pipelines are mostly short segments of pipeline spanning provincial borders in Western Canada and are connected on either side with provincially-regulated pipelines. Although the total amount of NEB regulated pipeline operated by our members is a very small portion of total operated pipelines, the upstream oil and gas industry is disproportionately impacted by regulations that are put forth in this sphere.

While CAPP supports the reinforcement of the polluter pay principle, we have concerns the regulatory proposal lacks the clarity required to effectively implement this principle. CAPP has the following comments which are consistent with the objectives and considerations outlined in the proposed regulations.

#### **Designated Company**

CAPP understands that the NEB may need to Designate a company, but seeks additional clarity due to concerns in the proposed regulations. The concept that other companies should pay for a liability because "*the company does not comply with an order of the NEB*" is unreasonable (P.1 Para 3) and non-compliance should not be an "*alternative*" for any pipeline owners/licensees. A company should only be Designated in the event of bankruptcy, not in a situation where it is non-compliant or not

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responsive. In the event the Designated Company goes bankrupt, the following financial considerations need to be considered:

- What particular recourse the NEB possesses towards the Designated Company that has gone bankrupt, and the NEB should exhaust all remedies prior to moving to recover costs from other companies who operate pipelines.
- The NEB's recovery of funds may (will) be ranked subordinate to the secured debt, however, the NEB should receive a prorated value with the rest of the unsecured creditors and should be in front of any and all Shareholder Equity owners from the Designated Company.
- The NEB needs to ensure the Designated Company cannot "ring fence" their assets from the cost recovery initiatives; ensure that the organizational structure matches the assets to the obligations and these obligations are not in a subsidiary company, and ensure the Parent maintains responsibility for cost recovery (bankruptcy of a subsidiary company should not be an option to alleviate themselves from the obligations and continue to operate). This obligation should be satisfied prior to the NEB recovering costs from other companies who operate pipelines
- The regulations must specify the type of costs that will be eligible for cost recovery through the CRF. The eligible costs should be limited to the direct cost to cleanup and restore the spill site and affected areas. Other claims and compensation for indirect costs should not be allowed.
- Claims for other than direct costs should be settled out of the Designated Company Insurance Policy established for that purpose. All non-direct claims will need to have a negotiation process to apportion the insurance if the claims exceed the insurance.
- In the last paragraph of page two on the pdf version (also in the NEB Act section 48.17 (1) (a)), the Government of Canada has indicated *"Amounts are to be recovered from the designated company and the companies who operate pipelines that transport the same commodity (e.g. oil, gas and non-hydrocarbon) or a commodity of the same class (e.g. liquids vs gases regardless of being hydrocarbon or non-hydrocarbon) as the commodity that was released."* CAPP believes that a clear definition of the specific classifications be established in the regulations to provide a clear understanding of which companies will be contributing to the CRF. Onshore pipelines would be kept separate from offshore pipelines regardless of the commodity transported.

Thank you for the opportunity to comment on the regulations respecting pipeline liability. CAPP would appreciate further opportunity to work with the NEB on the absolute liability and financial resource requirements to ensure requirements do not impose a disproportionate financial burden and align with existing provincial requirements and systems in place to address pipeline incidents.

CAPP looks forward to continued consultation as implementation and administration proceeds. We appreciate the engagement government has offered in this process thus far and look forward to ensuring an efficient and effective company cost recovery regulation regime. Please contact me at [ben.brunnen@capp.ca](mailto:ben.brunnen@capp.ca) to discuss further.

Best Regards,

Ben Brunnen

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