

National Energy
Board



Office national
de l'énergie

LETTER DECISION

File OF-Surv-AMP-2019 01
14 June 2019

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Director, Environment & Regulatory Affairs
Plains Midstream Canada ULC
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Mr. Robert Steedman
AMP Officer
National Energy Board
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Ms. Deirdre A. Sheehan
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Dear Messrs. Horne, Steedman, and Ms. Sheehan:

**Plains Midstream Canada ULC (PMC)
Request for Review AMP-001-2019
National Energy Board (NEB or Board) Letter Decision**

The Administrative Monetary Penalty (AMP) Officer issued Notice of Violation (NOV) AMP-001-2019 to PMC on 30 January 2019 in the amount of \$88,000 for failure to locate a pipeline contrary to paragraph 6(1)(b) of the [National Energy Board Pipeline Damage Prevention Regulations – Obligations of Pipeline Companies](#). On 22 February 2019, the Board received PMC's Request for Review of both the penalty amount and facts of the violation.

The Board issued a letter on 15 March 2019 setting out the process steps through which the review would be considered. In accordance with this process, the Board is in receipt of PMC's submissions dated 24 April 2019 and 27 May 2019. The Board has also received the materials included in the AMP Officer's Disclosure Package, as well as its submission dated 23 May 2019.

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In its 24 April 2019 submission, PMC withdrew its request to review the facts of the violation, but continued to request a review of the penalty amount. PMC submitted that the penalty amount should be reduced from \$88,000 to \$76,000 on the basis that the circumstances of the violation do not support the AMP Officer's assessment of a gravity value of +1 for Factor 5. That Factor requires an assessment of "whether the person provided all reasonable assistance to the Board with respect to the violation". PMC submitted that the Disclosure Package does not establish the facts to substantiate the AMP's characterization of the 15 May 2017 meeting between PMC and the Board. PMC further submitted that the assessment should not have been limited to a single point of contact and provided evidence, which was not included in the Disclosure Package, demonstrating other instances of cooperation with the Board.

In its reply submission dated 23 May 2019, the AMP Officer agreed that the facts supporting the gravity values must be established on a balance of probabilities on a review. The AMP Officer clarified that the gravity value of +1 was assessed exclusively in relation to PMC's initial response and did not reflect PMC's overall cooperation. The AMP Officer recommended that the Board adjust Factor 5 to zero, resulting in a recalculated penalty of \$76,000.

PMC filed a letter on 27 May 2019 advising that it has no further submissions.

Correction of the Penalty Amount

In light of the AMP Officer's recommendation to recalculate the penalty in accordance with PMC's request, 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-001-2019 is therefore corrected to \$76,000.

[REDACTED]

Steven Kelly
Presiding Member

[REDACTED]

Roland George
Member

[REDACTED]

Phil Davies
Member