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Canada

November 30, 2021 **Sent via email**

Canada Energy Regulator
Suite 210, 517 – 10th Avenue SW
Calgary, AB   T2R 0A8

Attention: **Rumu Sen**

Dear Ms. Sen:

Re: Enbridge Comments on Regulatory Proposal – Canada Energy Regulator Cost Recovery Regulations

In response to the Canada Energy Regulator ("CER")'s letter dated November 1, 2021, Enbridge, on behalf of its operating companies[1] (collectively "Enbridge") is pleased to provide the following comments on the Regulatory Proposal - Canada Energy Regulator Cost Recovery Regulations ("Regulatory Proposal").

A. Recovering costs directly from project applicants who are not currently regulated by the CER and for project applications that are denied or withdrawn

Enbridge supports the proposal that, when recovering costs for project reviews (i.e., applications to construct or operate a pipeline, international or interprovincial power line), the CER exclude companies who are already under its regulation and from whom costs are already recovered based on existing regulated assets.

Enbridge is also supportive of the proposed regulations under which the CER will be allowed to cost recover directly from some or all applicants, including those whose applications are denied or withdrawn. Enbridge seeks confirmation that amounts recovered from applicants whose applications are withdrawn or denied will be credited towards the respective commodity pool.

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[1] Enbridge Pipelines Inc., Enbridge Pipelines (NW) Inc., Enbridge Southern Lights GP Inc. on behalf of Enbridge Southern Lights LP, Enbridge Bakken Pipeline Company Inc. on behalf of Enbridge Bakken Pipeline Limited Partnership, Express Pipeline Ltd., Enbridge Gas Inc., Maritimes & Northeast Pipelines Ltd., Vector Pipeline Limited Partnership, St. Clair Pipelines Management Inc. on behalf of St. Clair Pipelines L.P., Niagara Gas Transmission Limited, Westcoast Energy Inc, and 2193914 Canada Limited.

Enbridge understands that applicants who are not currently regulated by the CER will pay a non-refundable levy of 0.2 per cent of the construction costs (greenfield levy), which may be adjusted during the application's assessment and following construction, if the application is approved. Enbridge, however, seeks to understand the basis for the 0.2 per cent of construction cost metric used for calculation of the greenfield levy.

Further, in Enbridge's view, a one size fits all greenfield levy percentage may not make for an allocation and recovery of costs that is reflective of the costs of regulatory oversight. While a percentage of project costs approach may seem reasonable given an expectation that the complexity and scope of issues would increase with a project's cost, Enbridge is concerned that such an approach may significantly under or over assign costs to individual projects as the level of regulatory oversight may not always be directly and proportionally correlated with costs.

Enbridge also seeks to understand what is meant and included/excluded by "actual construction costs". For large projects in particular, actual construction costs may not be known for some period after the project has entered service.

Finally, Enbridge would also like to confirm the definition of a greenfield entity. For example, would a wholly owned non-regulated subsidiary of a CER regulated entity sponsoring a project whose construction and operation is subject to the CER's jurisdiction be subject to the greenfield levy?

B. Modernizing the fixed levies recovered from small and intermediate companies

Enbridge is supportive of the proposal to replace fixed levies for small and intermediate oil and gas pipeline companies with throughput as the metric for determining their costs. However, Enbridge seeks to understand the basis for the selection of "10 km or less of CER-regulated pipeline" for certain companies to be eligible for paying costs based on five percent of their otherwise allocated CER costs based on actual throughput.

Further, Enbridge seeks clarity on how the remaining 95 percent of the throughput-based levy not charged to the companies operating less than 10 km of CER-regulated pipeline would be handled. For example, would such unallocated CER costs be re-distributed to the other pipelines in that commodity pool?

Also, for small or intermediate companies that operate more than one physically separate pipeline systems that each serve a distinct market and has a separate tariff, Enbridge queries whether each pipeline system should pay a levy rather than combining the pipeline systems for the purpose of the levy. Given the manner in which the CER regulates pipeline systems, this method of allocating the levy appears to better represent cost causation than rolling up the levy for these companies. This allocation may also allow a company with a small pipeline system (10 km or less) to qualify for the reduced levy for that pipeline system.

C. Relief

Enbridge notes that under the Regulatory Proposal, any oil pipeline company or gas pipeline company is not required to pay the portion of a cost recovery charge or administration levy payable that exceeds 2 per cent of the estimate of the rate base for the year in question, instead of 2 per cent of the estimated cost of service for the year in question as has been the case under the current cost recovery regulations. In Enbridge's view, this represents a significant change, one that may disqualify many companies from obtaining relief, as the rate base is typically larger than the cost of service in any given year. Basing the criteria for relief on any amount exceeding 2 per cent of the rate base would create a higher threshold and potentially preempt companies who have obtained relief in the past from applying for such relief. Nonetheless, Enbridge generally views rate base (or net book value) as a more objective and likely more convenient basis on which to determine relief (especially for those pipeline companies whose tolls are not determined based on cost of service).

Enbridge also seeks clarification on whether the intent is to include or exclude application levies for purposes of the 2 per cent of rate base threshold.

Enbridge notes that in the example provided by the CER, a number of small and intermediate companies would expect to see a large increase in their levies, and for some, the increases could still be significant even after subsequently seeking relief under the CER's cost recovery relief provisions. Additionally, the effect of higher levies may be further exacerbated for those companies not eligible for relief, but which would be also allocated a share of the relief granted to other pipeline companies in their commodity pool. Further complicating matters, some of these companies might then become eligible for relief, but would have no opportunity to

apply for relief as the 30-day window for relief applications would have closed by then.

Enbridge suggests the CER address this “iteration” issue in its s. 4.1 relief application process. One way to address this may be to require all companies to report both the throughput and rate base information at the same time. Under this approach the CER itself would undertake an assessment of which companies qualify for relief, grants them the relief, re-distributes the unallocated amount to the other pipelines, and then issues final levies to companies. In Enbridge’s view, having the CER handle the relief process upfront would be more efficient, and provide companies with more certainty in their internal budgeting for cost recovery.

If the CER does not accept the above proposal, Enbridge requests removal of the requirement to file audited financial statements to be eligible to qualify for relief. For several small pipeline companies who may have been previously exempt from filing audited financial statements (i.e. Group 2 pipeline companies), the added costs associated with obtaining audited financial statements may negate any relief amount that they may qualify for. In Enbridge’s view, filing unaudited financial statements accompanied by a signed attestation by an officer of the company should be considered acceptable for this purpose. If the CER has any concerns about the rate base or other filed information, it may exercise its right to audit the subject company.

Further, Enbridge recommends the CER allow companies, who have not previously filed throughput and rate base information, the option to file this information on a confidential basis.

D. Cost recovery allocation and methodology approach

Enbridge is generally supportive of the cost allocation and methodology proposed under the Regulatory Proposal.

Additional comment

Enbridge understands that the CER’s mandate is to essentially recover virtually all its costs from the entities that it regulates. Enbridge agrees with the principle that the cost of regulation is a cost of providing service and ultimately should be recovered from the entities that benefit from the existence of infrastructure subject to strong and healthy regulatory oversight. That being said, Enbridge understands that there are regulatory

activities being undertaken by the CER which the CER itself states are for the sole or primary benefit of the public at large. Therefore, in the interest of fairness, those costs should be segregated by the CER from the cost recovery regulations and, therefore, not be recovered from industry.

Enbridge thanks the CER for this opportunity to provide comments and looks forward to continued participation in the CER's review of the cost recovery regulations including providing comment on any potential future process.

Yours truly,