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Calgary, Alberta T2P 5H1

November 30, 2021

Filed via Email

Canada Energy Regulator
Suite 210, 517 Tenth Avenue SW
Calgary, AB T2R 0A8

Attention: Ms. Rumu Sen

Dear Ms. Sen:

**Re: Canada Energy Regulator (CER) – Regulations for Cost Recovery
Regulatory Proposal
Comments of TC Energy Corporation (TC Energy)**

Following a preliminary comment process and industry consultations on the CER's February 25, 2020 discussion paper on cost recovery (February 2020 Discussion Paper), and a subsequent comment process regarding the CER's issuance of a regulatory options document on December 11, 2020 (Options Document), the CER released a regulatory proposal document on November 1, 2021 (Regulatory Proposal) for the design of the CER cost recovery regulations and requested comments by November 30, 2021.

The following elements of cost recovery are considered in the 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from project applicants who are not currently regulated by the CER and for project applications that are denied or withdrawn;
- B. Modernizing the fixed levies recovered from small and intermediate companies;
- C. Relief; and
- D. Cost recovery allocation and methodology approach.

The following comments are provided by TC Energy on behalf of the following CER-regulated entities: TransCanada PipeLines Limited (TCPL), NOVA Gas Transmission Ltd. (NGTL), Foothills Pipe Lines Ltd. (Foothills), Trans Québec & Maritimes Pipeline Inc. (TQM), Great Lakes Pipeline Canada Ltd. (GLC), and TransCanada Keystone Pipeline GP Ltd. (Keystone). Together, these six entities currently pay a substantial portion of the CER costs recovered from industry.

TC Energy previously provided comments on August 26, 2020 in response to the February 2020 Discussion Paper and on January 11, 2021 in response to the Options Document, on behalf of these same CER regulated entities, and actively participated in the consultation process. TC Energy offers the following comments on the elements raised by the CER in the Regulatory Proposal.

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from project applicants who are not currently regulated by the CER and for project applications that are denied or withdrawn

This proposal is reasonable and reflects the comments previously submitted by TC Energy on this element in response to the Options Document, as it ensures that an application levy is paid by applicants not currently regulated by the CER even if an application is not approved or it is withdrawn. The proposal also aligns with several of the objectives for evaluating cost recovery options, particularly equitable recovery, operational simplicity, and predictability/certainty.

Element B: Modernizing the fixed levies recovered from small and intermediate companies

In its prior comments responding to the February 2020 Discussion Paper and the Options Document, TC Energy supported a rebasing and indexing of fixed levies for small and intermediate companies in order to both reflect the material increase in CER costs that have occurred since 1990 when the current fixed levies were set, and to ensure that the levies remain connected with future changes in CER costs and regulatory effort.¹ TC Energy also noted that to the extent there are significant adjustments in the level of the applicable levies as a result of changes to the cost recovery regulations, a gradual phase-in of the implementation may be appropriate.

While TC Energy believes that this element of the Regulatory Proposal seeks to achieve such a rebasing, it is concerned that there may be certain consequences associated with using throughput as the metric for determining the levies for small and intermediate companies, including:

- a more complicated structure that will drive additional reporting requirements for companies;
- the potential for more applications for relief to be filed each year from companies due to the likelihood of higher initial cost recovery estimates exceeding the applicable relief cap, regardless of how such a cap is established. This potential creates uncertainty with respect to the accuracy of the initial cost recovery estimates relative to the final estimates, which would cause budgeting concerns;
- associated higher workload for the CER to process the information noted above, which could lead to unnecessary cost increases to be recovered from industry; and
- potential confidentiality concerns with providing throughput information, which for some pipelines may result in the disclosure of customer-specific production and/or utilization.

For these reasons, TC Energy submits the current proposal does not align with the objectives of equitable recovery, operational simplicity, and predictability/certainty. TC Energy encourages the Commission to continue to assess options for simpler and more easily administered rebasing options for the levies applicable to small and intermediate companies that rely on existing filings rather than creating new filing requirements. For example, the information already filed by companies as part of year-end surveillance reports for Group 1 companies and as part of annual financial statements for Group 2 companies could be relied on to form the basis of a simpler rebased framework for cost recovery from small and intermediate companies (e.g., set levies as a fixed percentage of prior year revenues or cost of service).

In addition, while TC Energy remains of the view that throughput is an appropriate measure as the foundation of the cost recovery framework for large companies, TC Energy is concerned that

¹ Regarding indexing, TC Energy had previously suggested that the levies could be adjusted annually based on the change in the Consumer Price Index (CPI) or the change in aggregate CER costs.

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extending the measure to small and intermediate companies could result in some companies no longer making any contribution towards the recovery of the Commissions' costs should they cease operation, while at the same time requiring Commission oversight in relation to decommissioning, abandonment and post abandonment matters. TC Energy would view such an outcome as inconsistent with the principle of cost-based/user-pay, and therefore encourages the Commission to maintain an absolute minimum level of applicable levy from all CER-regulated companies as is currently the case, independent of the approach ultimately adopted to set levies for small and intermediate companies.

Element C: Relief

Consistent with its prior comments, TC Energy continues to support maintaining the existing relief provision for large companies. To the extent throughput may be used as the metric for determining the costs for small or intermediate companies, the same relief provision should be expanded to these companies.

TC Energy does not support the proposed change to base the relief on rate base rather than cost of service, as it could have unintended effects on tolls and competitiveness and unfairly prejudice certain companies.

TC Energy observes that there is little relationship between rate base and annual cost recovery levies. While cost of service represents the total annual costs and expenses incurred to provide service, rate base represents the amount of invested capital in a company's assets and is a cumulative measure that includes additions to, and depreciation of, a system over a multi-year time horizon. Rate base is typically recovered from customers over the economic planning horizon of a pipeline through depreciation expense.

Due to its cumulative nature, the rate base of a pipeline system is often many times greater than its cost of service, such that some companies could be required to include cost recovery levies in their annual cost of service that are significantly higher than the current 2% limit based on cost of service, which would negatively affect toll stability and competitiveness for these companies. A rate base measure could also present a problem on the other end of the spectrum with fully depreciated pipelines that would be exempt from any cost recovery.

The disconnect between rate base and the annual expense that CER cost recovery levies represent renders the use of rate base an inappropriate measure to form the basis of the relief provision. In contrast, the existing relief measure appropriately ensures that the levies applicable to any company will not exceed an unreasonable threshold such that they would represent an excessive portion of the annual cost to provide service by a pipeline. To illustrate this point, if the relief provision was based on rate base as proposed, the annual levy payable by GLC could reach approximately 10 percent of the annual cost of service of that pipeline, which TC Energy submits is unreasonable.

TC Energy notes but does not understand the suggestion that rate base is easier to calculate than cost of service. Pursuant to the Gas Pipeline Uniform Accounting Regulations and the Oil Pipeline Uniform Accounting Regulations, CER-regulated companies are required to maintain separate books of account, and while not all companies are regulated on a cost of service basis, existing information currently filed pursuant to the *Financial Reporting Regulations* (annual reports for Group 2 companies and annual surveillance reports for Group 1 companies) already provides cost of service

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information or a reasonable proxy that could be relied on as the foundation of the relief provision, if necessary.

Lastly, TC Energy notes that the Regulatory Proposal for element C includes a requirement for any company applying for relief to also submit audited financial statements with its relief request. TC Energy understands this requirement to relate to Group 2 companies rather than creating a new requirement for Group 1 companies. TC Energy submits the requirement should not be expanded to Group 1 companies who are already required to file significantly more detailed information pursuant to the *Financial Reporting Regulations* that includes all the information required from a cost recovery perspective in the year-end surveillance reports. In contrast, Group 2 companies are exempt from these more detailed requirements and instead are required to file audited financial statements.

Element D: Cost recovery allocation and methodology approach

TC Energy continues to support the existing allocation of costs based on commodity group and the existing three-year billing cycle to the extent it remains the most administratively efficient. The comments that TC Energy provided for elements A, B and C above reflect its comments for the remaining components included in the element D proposal.

Conclusion

Overall, TC Energy believes that the current framework should be fine-tuned with an objective of establishing a reasonable, predictable, and stable approach to cost recovery, rather than seeking to implement a new and untested framework that could result in unintended consequences, as would be the case with the current proposals under element B and element C of the Regulatory Proposal.

If the CER has any questions or requires additional information, please contact me or any other TC Energy representative on the CER Cost Recovery Liaison Committee.

Yours truly,

TransCanada PipeLines Limited

NOVA Gas Transmission Ltd.

Foothills Pipe Lines Ltd.

Trans Québec & Maritimes Pipeline Inc.

Great Lakes Pipeline Canada Ltd.

TransCanada Keystone Pipeline GP Ltd.