

National Energy
Board



Office national
de l'énergie

Draft Pipeline Financial Requirements Guidelines

FOR DISCUSSION PURPOSES ONLY

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1. Introduction

1.1 Background

The *Pipeline Safety Act* came into force on 19 June 2016. Among other changes, the *Pipeline Safety Act* amended the [National Energy Board Act](#) (NEB Act) by:

- introducing absolute liability to pipeline companies, and setting out the absolute liability level of \$1 billion for pipeline companies with the capacity to transport greater than 250,000 barrels of oil per day (major oil pipeline companies);
- requiring pipeline companies to maintain financial resources equal to their absolute liability level;
- requiring pipeline companies to demonstrate to the Board that they meet their requirement to maintain financial resources; and,
- providing the Board with the ability to order a pipeline company to maintain financial resources in specific types and amounts.

In February 2018, the Government introduced Bill C-69, *An Act to Enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts*. Bill C-69 proposes to repeal the *National Energy Board Act* and replace it with the *Canadian Energy Regulator Act*. The above referenced provisions are included in the *Canadian Energy Regulator Act* and will apply if and when the *Canadian Energy Regulator Act* comes into force.

On 8 June 2018, the [Pipeline Financial Requirements Regulations](#) (the Regulations) were passed by Her Excellency the Governor General in Council, on the recommendation of the Minister of Natural Resources, pursuant to subsections 48.12(6), 48.13(7) and 48.14(3) of the NEB Act. The Regulations were published in the *Canada Gazette*, Part II, Volume 152, Number 14 on 11 July 2018. If Bill C-69 came into force, the Regulations would continue, and be deemed to have been made under the *Canadian Energy Regulator Act*.¹

The Regulations set out specific financial instruments that the Board may order companies to maintain, and set out the portion of financial resources that must be held in a form that is readily accessible to each company.

For the non-major oil pipeline companies – all other oil, gas, and commodity pipeline companies – the regulations regarding absolute liability limits will come into force on 11 July 2019. As of that date, all pipeline companies must maintain financial resources equal to their respective absolute liability limits, or a greater amount if determined by the Board.

¹ See paragraph 44(g) of the *Interpretation Act*.

1.2 Purpose of the Pipeline Financial Requirements Guidelines

The Pipeline Financial Requirements Guidelines (Guidelines) provide further details on how a pipeline company should demonstrate that it meets the financial resource requirements established in the NEB Act and the Regulations. Each company's information will be assessed on a case-by-case basis. These Guidelines may be amended from time to time by the NEB as necessary. The Guidelines do not restate all of the particular requirements of the NEB Act or Regulations and each company is responsible for ensuring familiarity and compliance with the statutory requirements.

The Guidelines apply in a manner that is supplementary to the requirements of the NEB Act and the Regulations. In the event of any inconsistency or discrepancy between the Guidelines and the NEB Act and/or the Regulations, the NEB Act and Regulations will prevail over the Guidelines.

2. Financial Requirements Overview

The NEB Act states that the purpose of sections 48.12 to 48.17 is to reinforce the "polluter pays" principle by, among other things, imposing financial requirements on any company that is authorized under the NEB Act to construct or operate a pipeline.

Each company must maintain financial resources equal to its absolute liability limit, or a greater amount if specified by the Board. In the event of a release, the company must respond appropriately, contain the incident, and pay out all claims as appropriate.

If a company does not comply with an order of the Board in respect of any action or measure to be taken in relation to a release, or if the Governor in Council is of the opinion that the company does not have or is not likely to have the financial resources necessary to be paid for the costs incurred or to be incurred in relation to a release, or for the compensation that might be awarded for compensable damage caused by the release, then the Governor in Council may designate a company. Upon designation, the Board may take any action or measure considered necessary in relation to the release and may authorize a third party to take any such action or measure.

(a) Definitions/ Interpretation

Absolute Liability - The NEB Act states that if an unintended or uncontrolled release of Oil, Gas or any other commodity from a pipeline occurs, the Company that is Authorized under the NEB Act to construct or operate that pipeline is liable, without proof of fault or negligence, up to the Absolute Liability limit that applies to it.

This means that Companies are liable, regardless of negligence or fault, for losses or damages resulting from an unintended or uncontrolled release up to certain limits. This is known as *Absolute Liability*. The Absolute Liability limit is defined in the NEB Act for Major Oil Pipelines, and in the Regulations for all other pipelines.

Absolute Liability Class – The NEB Act establishes an Absolute Liability limit of \$1 billion for Companies Authorized to construct or operate one or more pipelines that individually or in the aggregate have the Capacity to transport at least 250 000 barrels of Oil per day. The Regulations establish classes, Absolute Liability limits and financial resource requirements for other pipeline Companies.

Authorized – The Regulations note that **authorized**, in respect of a pipeline, describes a pipeline whose construction and operation have been authorized under Part III of the Act, but not

- (a) a pipeline whose construction has not begun or a pipeline under construction that does not contain any commodity;
- (b) a pipeline that, by order of the Board, has been deactivated or decommissioned; or,
- (c) a pipeline that, with leave of the Board, has been abandoned;

Accordingly, the Board does not require Companies to maintain Financial Resources under the Financial Resource provisions of the NEB Act and Regulations for pipelines as described in the above paragraphs (a), (b), or (c).

Capacity - a pipeline's maximum daily Capacity assuming the pipeline(s) is (are) operating at 100% of design specifications. Capacity will account for all Board-approved facility additions, removals, decommissionings, and deactivations.

Company – Section 48.11, Subsections 48.12(3), 48.12(4), and 48.13(1) all refer to a “company that is Authorized under this [NEB] Act to construct or operate a [the] pipeline”. Paragraph 48.12(5)(a) refers to a “company that is Authorized under this [NEB] Act to construct or operate one or more pipelines”, and paragraph 48.12(5)(b) refers to a “company that is Authorized under this [NEB] Act to construct or operate any other pipeline”. The NEB Act defines company as including:

- (a) a person having authority under a Special Act to construct or operate a pipeline, and,
- (b) a body corporate incorporated or continued under the *Canada Business Corporations Act* and not discontinued under that Act;

The NEB has interpreted this provision to include entities incorporated (or continued and not discontinued) under provincial corporate legislation.

Accordingly, the “company” referred for the purposes of administering the Financial Resources provisions of the NEB Act and the Regulations is the NEB-regulated certificate or authorization holder (and not a parent or affiliate company).

Financial Resources - The NEB Act requires a Company Authorized to construct or operate a pipeline to maintain the amount of Financial Resources necessary to pay the applicable Absolute Liability limit that applies to it or, if the Board specifies a greater amount, that amount.

The NEB Act authorizes the NEB, if it chooses to do so, to order a Company to maintain the required Financial Resources in one or more specific types of Financial Resources.

Funds that are set aside or allocated for abandonment funding, such as funds in trust, letters of credit, or surety bonds, cannot be used to respond to an incident. Accordingly, these abandonment funds do not form part of a Company's balance in maintaining Financial Resources pursuant to subsection 48.13(1) of the NEB Act.

Financial Resources Plan – A set of filings provided by a Company to satisfy the Board that the Company meets the requirement to maintain the amount of Financial Resources necessary to pay its Absolute Liability limit.

Financial Resource Requirements established in the NEB Act and the Regulations – for the purposes of these Guidelines, this term refers to Sections 48.11, 48.12, 48.13, and 48.14 of the NEB Act, and the entirety of the Regulations.

Gas – The NEB Act defines gas as

- (a) any hydrocarbon or mixture of hydrocarbons that, at a temperature of 15°C and a pressure of 101.325 kPa, is in a gaseous state, or,
- (b) any substance designated as a gas product by regulations made under section 130.

Guidelines – these Pipeline Financial Requirements Guidelines, the purpose of which is to provide further details on how a pipeline Company should demonstrate that it meets the Financial Resource Requirements established in the NEB Act and the Regulations.

Major Oil Pipeline – The NEB Act sets out the Absolute Liability level of \$1 billion for pipeline Companies with the Capacity to transport greater than 250,000 barrels of Oil per day. These Companies are referred to as Major Oil Pipeline Companies throughout these Guidelines.

Natural Gas Liquids (NGLs) – the Financial Resource Requirements established in the NEB Act and the Regulations do not set out Absolute Liability limit Classes specifically for NGL pipelines. Accordingly, all pipeline Companies transporting **NGL** hydrocarbons will be treated as either Oil pipelines or Gas pipelines, depending on the product(s) they are Authorized to transport, as explained further in section 3.3(b) of these Guidelines below, and the Regulations.

NEB Act – *National Energy Board Act*

Non-Major Oil Pipeline – The Regulations set out Absolute Liability levels for all NEB-regulated pipeline Companies that do not meet the definition of a Major Oil Pipeline. Absolute liability levels for Non-Major Oil Pipelines are based on Capacity (for Oil pipeline Companies), Risk Value (for Gas pipeline Companies) and commodity type transported and terrain traversed for other commodity pipeline Companies.

Oil – The NEB Act defines oil as

- (a) any hydrocarbon or mixture of hydrocarbons other than gas, or,
- (b) any substance designated as an oil product by regulations made under section 130;

Readily Accessible Portion - The NEB Act and Regulations state that the Board may order a Company to maintain Financial Resources, including in readily accessible form(s). The Regulations set out minimum amounts of Financial Resources that must be readily accessible to a Company, and set out the specific types of readily accessible Financial Resources a Company could be ordered by the NEB to maintain.

Regulations – the *Pipeline Financial Requirements Regulations*, which were passed by Her Excellency the Governor General in Council, on the recommendation of the Minister of Natural Resources, pursuant to subsections 48.12(6), 48.13(7) and 48.14(3) of the NEB Act.

Risk Value – the Risk Value for a Gas pipeline Company is calculated by multiplying the square of the pipeline’s maximum outside diameter, measured in millimetres, by the maximum operating pressure, measured in megapascals, and, if the Company operates two or more pipelines, the Risk Value is that of the pipeline with the highest Risk Value.

3. Determining Absolute Liability Class

NEB regulated Companies are subject to the Absolute Liability provisions of the NEB Act and Regulations. The Absolute Liability limits are determined based on various criteria, which place Companies into certain classes. The following section highlights some key features of the NEB Act and Regulations, and provides guidance in terms of how a Company can calculate its respective Absolute Liability Class.

3.1 Absolute Liability Limits

The NEB Act sets out that the Absolute Liability limit for Major Oil Pipeline Companies is one billion dollars.

The Regulations set out the Absolute Liability limits for all other classes of Companies as follows:

- **Oil Class 2 - \$300,000,000** for a Company that operates one or more Authorized Oil pipelines that individually or in the aggregate have the Capacity to transport at least 50,000, but fewer than 250,000, barrels of Oil per day;
- **Oil Class 3 - \$200,000,000**, for a Company that operates one or more Authorized Oil pipelines that individually or in the aggregate have the Capacity to transport at least one, but fewer than 50,000, barrels of Oil per day;
- **Gas Class 1 - \$200,000,000**, for a Company that operates one or more Authorized Gas pipelines whose Risk Value is at least 1,000,000;

- **Gas Class 2 - \$50,000,000**, for a Company that operates one or more Authorized Gas pipelines whose Risk Value is at least 100,000 but less than 1,000,000;
- **Gas Class 3 - \$50,000,000**, for a Company that operates one or more Authorized Gas pipelines whose Risk Value is at least 15,000 but less than 100,000;
- **Gas Class 4 - \$10,000,000** for a Company that operates one or more Authorized Gas pipelines whose Risk Value is at least one but less than 15,000;
- **Other Commodity Class 1 - \$10,000,000** for a Company that operates one or more Authorized pipelines that transport a commodity — other than Oil, Gas, carbon dioxide or water — in a liquid state by land or in a liquid or semi-solid state across a watercourse;
- **Other Commodity Class 2 - \$5,000,000** for a Company that operates one or more Authorized pipelines that transport a commodity — other than Oil, Gas, carbon dioxide or water — in a gaseous or semi-solid state by land or in a gaseous state across a watercourse;
- **CO₂ or Water Class - \$5,000,000** for a Company that operates one or more Authorized pipelines that transport carbon dioxide or water.

3.2 Companies Operating Multiple Pipelines or Shipping Multiple Commodities

The Financial Resources Requirements established in the NEB Act and Regulations apply to Companies, not individual pipelines. Some NEB-regulated Companies operate multiple pipelines, sometimes even with different products in each pipeline (i.e., batches of crude, NGLs). Accordingly, the Regulations provide:

- If a Company operates **an Authorized pipeline that transports two or more commodities**, the Absolute Liability limit is determined as if the Company were transporting only the commodity that results in the highest Absolute Liability limit.
- If a Company operates an Authorized pipeline that transports **two or more varieties of the same commodity**, the Absolute Liability limit applicable to the Company is determined in accordance with paragraph 48.12(5)(a) of the NEB Act and subsection 2(1) of the Regulations as if the Company were transporting only the variety that results in the highest Absolute Liability limit.
- If a Company operates **two or more Authorized pipelines that are unconnected and transport different commodities**, the Absolute Liability limit is determined as if the Company were operating only the pipeline that results in the highest Absolute Liability limit.

3.3 Operational & Design Factors

(a) Oil Pipelines

The NEB Act and Regulations set out classes of liability based on Capacity for Companies that are Authorized to construct or operate one or more pipelines that individually or in the aggregate have the capacity to transport Oil.

As noted in the definitions section above, to determine Capacity, the Board will rely on the Capacity assuming the Board-approved design of the pipeline. This means that, for the purposes of determining Absolute Liability, the Board will consider Capacity to be a pipeline's maximum daily Capacity assuming the pipeline(s) is (are) operating at 100% of design specifications. Capacity will account for all Board-approved facility additions, removals, decommissionings, and deactivations.

Available capacity, average throughput, or maximum throughput over a given time period, will not be relied upon as measures of Capacity. The capacity resulting from voluntary, temporary, or Board-mandated pressure or flow restrictions will not determine Capacity for the purposes of Absolute Liability Class.

For Companies Authorized to construct or operate multiple Oil pipelines, the cumulative Board-approved Capacity of those pipelines will be used to determine the Company's Absolute Liability level. For example, if a NEB-regulated Company has two Oil pipelines, each with 150,000 barrels per day of Capacity, the Company in the aggregate has the Capacity to transport 300,000 barrels per day, and its Absolute Liability limit would be \$1 billion.

(b) Natural Gas Liquids Pipelines

Companies that are Authorized to transport NGLs that do not meet the definition of Gas in the NEB Act will be considered Oil pipelines for the purposes of the Financial Resource Requirements established in the NEB Act and Regulations. In other words, Companies that are Authorized to transport NGLs that at a temperature of 15°C and a pressure of 101.325 kPa, are in a **liquid** state, will be treated as Oil pipelines.

If Schedule A of a Company's certificate authorizes it to transport "NGLs" generally – without specifying the types of NGLs – or any NGLs that meet the definition of "Oil" in the NEB Act, then the Oil Absolute Liability limits apply.

If Schedule A of a Company's certificate only authorizes the transport of NGLs that meet the definition of "Gas" under the NEB Act, then the Gas Absolute Liability limits apply. The Company is responsible for providing evidence that the NGLs it is Authorized to transport meet the definition of Gas in the NEB Act.

(c) Gas Pipelines

For Gas pipelines, the Absolute Liability level will be determined based on Risk Value. The Regulations establish that Risk Value is calculated by multiplying the square of the pipeline's maximum outside diameter, measured in millimetres, by the maximum operating pressure, measured in megapascals. If the Company operates two or more pipelines, then the Risk Value is that of the pipeline with the highest Risk Value.

The Risk Value should be calculated based on the Board-approved maximum operating pressure, and maximum outside diameter on a pipeline or pipeline system. For purposes of determining Risk Value for a given pipeline, only Board-authorized facility additions, removals, decommissionings, and deactivations should be taken into account. Operational pressure, average pressure, or pressure taking into consideration voluntary, temporary, or Board-directed

pressure or flow restrictions will not be relied on as a basis to determine Risk Value for the Absolute Liability Class.

Unlike with Oil pipelines, Risk Value is not “additive” the same way Capacity is additive in determining the Absolute Liability Class for a Company that operates multiple Oil pipelines. If a Company operates multiple Gas pipelines, its Absolute Liability Class is determined based on its Gas pipeline with the highest Risk Value.

(d) Other Commodity

For pipelines that ship products not meeting the definition of Oil or Gas, the other commodity Absolute Liability Classes apply. The Company is responsible for providing evidence of the commodity it transports.

(e) Changes to Pipeline Capacity or Risk Value

Given that pipelines may go through design changes throughout their lifecycle which impact Capacity or Risk Value, Company Absolute Liability Classes may change accordingly. For example, a pipeline under construction would not be subject to Absolute Liability until such time as the pipeline contained a commodity, at which point the Company would be subject to Absolute Liability. Throughout the Company’s lifecycle, facility additions, acquisitions, and/or design changes may result in an increase in a Company’s Absolute Liability Class, while deactivations, decommissionings, asset sales, and abandonment may result in a decrease in a Company’s Absolute Liability Class.

Practically, a pipeline Company may modify, decommission, abandon, or deactivate facilities, which could reduce the pipeline’s Capacity or Risk Value to the point where the pipeline would be classified in a lower Absolute Liability Class. For example, an Oil pipeline Company may apply for and receive approval to abandon a pump station, the effect of which could be to reduce its Capacity from 55,000 barrels per day to 40,000 barrels per day.

A Company must apply to the Board explicitly to have its Absolute Liability Class lowered, providing sufficient evidence to the Board detailing the impacts of the modification, prior to the Board approving a decrease in the Company’s Absolute Liability Class. Following Board approval of the lowering of the Company’s Absolute Liability Class, the change to Absolute Liability Class would become effective once the applied-for changes to a Company’s system had been physically completed in accordance with any requirements and conditions.

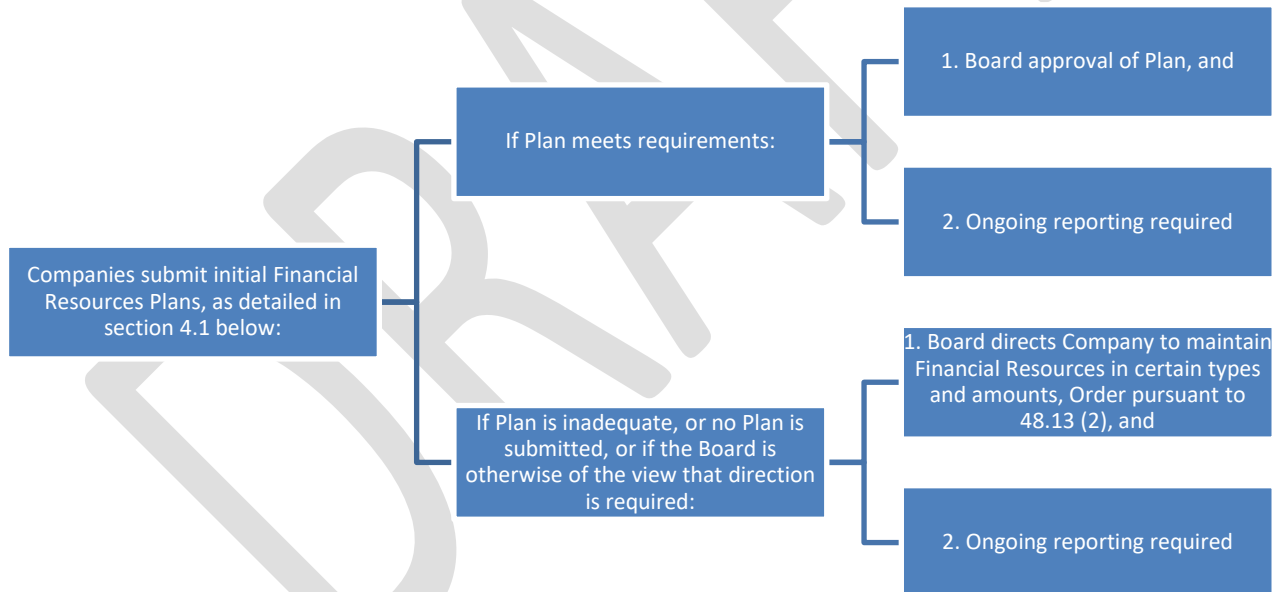
The Board will only consider facility changes that have been approved by the Board as affecting a Company’s Capacity or Risk Value. Accordingly, reduced throughput levels, voluntary pressure restrictions, and other facility changes for which no Board order/decision/filings are required will not be determinative in assessing a Company’s Absolute Liability Class. In addition, Board-directed pressure or flow restrictions will not affect a Company’s Absolute Liability Class.

4. Financial Resources Plan

A pipeline Company must maintain the amount of Financial Resources necessary to pay the amount of the limit of Absolute Liability that applies to it or the amount specified by the Board. Each pipeline Company must satisfy the Board that it meets the requirement to maintain Financial Resources and complies with any Board order specifying the type of Financial Resources it must maintain.

Pursuant to subsection 48.13(3) of the NEB Act, Companies are required to satisfy the Board that their Financial Resources meet the requirements of the NEB Act and Regulations. To do this, Companies must file a Financial Resources Plan with the Board, and annual compliance filings. The section below provides the expectations for filing a Financial Resources Plan, as well as the details for annual compliance filings.

The Board will review a Company's Financial Resources Plan and it may order a Company to maintain certain financial resource types, in certain amounts. The process will work as follows:



4.1 Financial Resources Plan Contents

Pursuant to subsection 48.13(3) of the Act, Companies must satisfy the Board that they meet the requirements in the Act and Regulations. This must be done through the filing of a Financial Resources Plan with the Board, detailing how the Company's Financial Resources meet the Financial Resource Requirements established in the NEB Act and Regulations. The Financial Resources Plan should:

- Explain how the Financial Resources a Company maintains enable it to respond to a release;
- Detail all types of Financial Resources available to it, and amounts of each type;
- Detail the key terms of the each financial resource or financial instrument available;
- Describe the timing of access for each financial resource; and,
- Demonstrate how the Financial Resources maintained allow it to pay the amount of Absolute Liability applicable, or a greater amount if specified by the Board.

The Financial Resources Plan should explain whether the Financial Resources are directly held at the NEB-regulated Company or NEB-Authorization holder level (e.g., cash on hand, or undrawn credit lines at the authorization holder level), at an affiliate level (e.g., lines of credit or commercial paper programs of a parent Company), or whether the resources are contingent and provided from a third party (e.g., insurance). For any non-directly held resources, the Financial Resources Plan should detail whether access is at the NEB-regulated Company's sole discretion, or otherwise encumbered (and if so how).

The Financial Resources Plan should provide rationale detailing why the Financial Resources are sufficient to pay the amount of liability applicable to a Company, and include a description of the timing of mobilization of funds, including the length of time it would take to access funds equal to the full Absolute Liability limit applicable to the Company.

Companies are not limited to the prescribed list of financial resource types listed in section 3 of the Regulations. Companies may have other financial resource types that could be suitable for release response measures. If Companies include Financial Resources outside of the prescribed list in section 3 of the Regulations, they should provide rationale to explain why these other types are suitable.

Funds that are set aside or allocated for abandonment funding, such as funds in trust, letters of credit, or surety bonds, cannot be used to respond to an incident. Accordingly, these may not form part of a Company's Financial Resources Plan.

The Financial Resources Plan should include a completed table, as follows:

Table 1: Financial Resources Plan

Authorization Holder Name:				
Capacity/Risk Value:				
Absolute Liability Limit:				
\$ 000's CAD (as at most recent year-end Audited Financial Statements)	Parent Company, if Applicable²	Authorization Holder	Total	Timing of Access (business days)
Cash				
Lines of Credit (undrawn portion)				
Commercial Paper (undrawn portion of program)				
Other Short-Term Resources (explain) ³				
Total short-term, accessible within five (5) business days				
Insurance				
Surety Bonds				
Parent/Affiliate Guarantees (from Parent Co. to Authorization Holder)				
Other Financial Resources (explain)				
Total Other				

² Use separate column for each relevant parent/affiliate.

³ Add rows as required for each unique type of Financial Resource.

4.2 Corporate Structure Considerations

Subsection 48.13(1) of the Act stipulates that “**a Company that is Authorized under this [NEB] Act** to construct or operate a pipeline shall maintain [...] Financial Resources”. Accordingly, the Board will not rely on Financial Resources of a parent or affiliate as a demonstration of “maintaining” Financial Resources at the operating Company level, absent a parental/affiliate guarantee, a line of credit with a parent/affiliate guarantor, or some other instrument or mechanism providing direct, unencumbered access to those parent company Financial Resources at the authorization holder Company’s sole discretion.

For any Financial Resources Plan that intends to place reliance on the resources of a parent or affiliate, a detailed corporate structure diagram must be provided. Additionally, a description of the mechanism or instrument that provides access to parent/affiliate funds (such as a letter of guarantee or line of credit), as well as a copy of the instrument, must be provided.

The Board notes that some authorization holders may be a “named beneficiary” or a “named insured” on broad, corporate-wide insurance policies. As long as the NEB-regulated authorization holding Company is a named insured or named beneficiary, the Board will consider the insurance coverage as part of a Financial Resources Plan, to the extent the authorization holder has coverage under the policy.

4.3 Sole Reliance on Insurance

The Board expects Companies to explain how they can fund initial release response measures in a timely manner prior to insurance claims being submitted, processed, and paid. Accordingly, the Board expects Companies to take a broad approach to planned funding of spill response – utilizing various types of resources, such as cash on hand, internal resources, credit lines, and commercial paper programs, prior to reliance on insurance.

The Board is unlikely to accept solely insurance, along with the minimum required “readily accessible” portion of Financial Resources, as an adequate means of maintaining Financial Resources. The Board expects Companies to have sufficient resources to respond to an incident in a timely manner prior to insurance claims being made, processed, and paid. To date, the Board has not accepted insurance for more than 50% of a Company’s Financial Resources requirement.

4.4 Readily Accessible Resources

The Regulations stipulate that a Company that operates one or more Authorized pipelines referred to in paragraphs 2(1)(a) to (d) must maintain at least 5% of the amount of Financial Resources referred to in subsection 48.13(1) of the NEB Act in types that are readily accessible. A Company that operates one or more Authorized pipelines referred to in paragraphs 2(1)(e) to (i) must maintain at least 2.5% of the amount of Financial Resources referred to in subsection 48.13(1) of the NEB Act in types that are readily accessible.

These funds must be accessible within five (5) business days.

Accordingly, the readily accessible requirement is as follows, based on each NEB-regulated Company's Absolute Liability Class:

Table 2: Readily Accessible Resource Levels

Commodity:	Company Absolute Liability Class:	Absolute Liability Limit:	Readily Accessible Resource Level:
Oil	Oil Class 1: a Company that is Authorized to construct or operate one or more pipelines that individually or in the aggregate have the Capacity to transport at least 250,000 barrels of Oil per day;	\$1,000,000,000	Not Specified
Oil	Oil Class 2: a Company that operates one or more Authorized Oil pipelines that individually or in the aggregate have the Capacity to transport at least 50,000, but fewer than 250,000, barrels of Oil per day;	\$300,000,000	\$15,000,000
Oil	Oil Class 3: a Company that operates one or more Authorized Oil pipelines that individually or in the aggregate have the Capacity to transport at least one, but fewer than 50,000, barrels of Oil per day;	\$200,000,000	\$10,000,000
Gas	Gas Class 1: a Company that operates one or more Authorized Gas pipelines whose Risk Value is at least 1,000,000;	\$200,000,000	\$10,000,000
Gas	Gas Class 2: a Company that operates one or more Authorized Gas pipelines whose Risk Value is at least 100,000 but less than 1,000,000;	\$50,000,000	\$2,500,000
Gas	Gas Class 3: a Company that operates one or more Authorized Gas pipelines	\$50,000,000	\$1,250,000

	whose Risk Value is at least 15,000 but less than 100,000;		
Gas	Gas Class 4: a Company that operates one or more Authorized Gas pipelines whose Risk Value is at least one but less than 15,000;	\$10,000,000	\$250,000
Other commodity	Other Commodity Class 1: a Company that operates one or more Authorized pipelines that transport a commodity — other than Oil, Gas, carbon dioxide or water — in a liquid state by land or in a liquid or semi-solid state across a watercourse;	\$10,000,000	\$250,000
Other commodity	Other Commodity Class 2: a Company that operates one or more Authorized pipelines that transport a commodity — other than Oil, Gas, carbon dioxide or water — in a gaseous or semi-solid state by land or in a gaseous state across a watercourse;	\$5,000,000	\$125,000
CO ₂ or Water	CO ₂ or Water Class: a Company that operates one or more Authorized pipelines that transport carbon dioxide or water.	\$5,000,000	\$125,000

5. Board-Directed Financial Resources

If the Board is not satisfied with a pipeline Company's Financial Resources Plan, if a Company does not submit a Financial Resources Plan, or if the Board is otherwise of the view that direction is required, the Board may direct a Company to maintain Financial Resources in certain types⁴ and in certain amounts of each type.

This may be necessary for various reasons, including but not limited to:

- A Company's Financial Resources do not meet the minimum amount (i.e. Absolute Liability amount, or higher if directed) set out by the NEB Act or Regulations;
- A Company's Financial Resources do not include sufficient readily accessible funds, the levels of which are established by the Board or in the Regulations;
- A Company's Financial Resources available for spill response are reliant on Financial Resources of a parent/affiliate, to which the NEB-regulated Company does not have direct, unencumbered or guaranteed access; or,

⁴ Set out in Section 3 of the Regulations

- A Company's Financial Resources Plan is too heavily reliant on contingent resources of a third party, (e.g. sole reliance on insurance, with no internal financial means to respond to an incident prior to availability of insurance proceeds).

6. Increasing of Financial Requirements by the NEB

The Board has no authority to increase Absolute Liability limits. Absolute Liability limits are set out in the NEB Act and Regulations. The NEB Act states that the Governor in Council may, by regulation, on the Minister's recommendation, prescribe an amount greater than one billion dollars for Major Oil Pipeline Companies, and prescribe Absolute Liability limits for all Non-Major Oil Pipeline Companies.

However, the Board does have the discretion, pursuant to subsection 48.13(1), to require a Company to maintain Financial Resources in an amount greater than its corresponding Absolute Liability amount. The Board may exercise this discretion on a case-by-case basis.

7. Types of Financial Resources

7.1 Overview

Subsection 48.13(2) indicates that the Board may order a Company, or as a member of a class of Companies, to maintain Financial Resources in certain types, and in certain amounts of each type. The Regulations prescribe a list of financial resource types, and a list of readily accessible types, from which the Board may choose to direct Companies to maintain.

The financial resource types are prescribed via the Regulations as follows:

- Insurance policy;
- Escrow agreement;
- Letter of credit;
- Line of credit;
- Participation in a pooled fund referred to in the NEB Act;
- Parent company guarantees;
- Surety bond or pledge agreement, or indemnity bond or suretyship agreement; and,
- Cash or cash equivalents.

The Regulations set out that a pipeline Company must maintain certain minimum amounts of Financial Resources in a form that is readily accessible to the Company, as reiterated in Table 2 above. The financial instruments the NEB could order a Company to use are set out in the Regulations and would be one or more of the following for the purposes of the Readily Accessible Portion:

- Letter of credit;
- Line of credit;
- Participation in a pooled fund referred to in the Act; and,
- Cash or cash equivalents.

7.2 Financial Resource Attributes

If any of the following financial resource types are relied upon by a Company as part of its Financial Resources Plan, or in the event the Board directs a Company to maintain any of the following financial resource types, the Financial Resources should contain the following attributes:

(a) Insurance

Any Company relying on insurance to satisfy its requirement to maintain Financial Resources should have policies in place with conditions suitable to cover the scope of operations of the Company, and applicable to the exposures involved in its activities. A Company relying on insurance must provide a certificate of insurance, containing an overview of its insurance policies, detailing at a minimum:

- Coverage/policy types, and limits of each policy type;
- Deductible amounts, per incident and policy type;
- A list of insured parties under the policy(ies);
- Effective date(s) and expiry date(s); and,
- The insurance providers, and the providers' respective A.M. Best Ratings (or equivalent).

The Company shall submit updated certificates of insurance pursuant to any subsequent renewals of the insurance policy(ies) on an annual basis to the Board, as part of its annual compliance filing detailed in section 7 of these Guidelines, below.

Should notice of cancellation of insurance be issued by insurers, the Company shall act to remove the reason for cancellation, or shall act immediately to obtain alternative insurance, and shall inform the Board of the actions taken to this end.

(b) Escrow Agreement

The Board may direct a Company to establish an escrow agreement with an escrow agent mutually acceptable to the Board and a Company. Such agreement would acknowledge receipt of the requisite amount of Financial Resources that would be established in an escrow fund. The escrow fund would be managed and governed in accordance with the terms and conditions of the escrow agreement.

(c) Letter of Credit

The Board would expect that for a letter of credit to be satisfactory, it would meet the following criteria:

- Beneficiary: The beneficiary must be identified as “Her Majesty the Queen in Right of Canada as represented by the National Energy Board”.
- Duration: automatically renew on an annual basis without notice or amendment, and without a maximum number of renewals.
- Issuer: The issuer of the letter of credit must be a Canadian chartered bank set out in Schedule I of the *Bank Act*.
- Access to Funds: The full amount of the letter of credit must be payable within five (5) days to the beneficiary on demand upon presentation of the letter of credit at the bank’s main branch in Calgary (or via other means of presentation as agreed to by the Board).
- Notification: The beneficiary must be notified by the Issuer by way of courier or registered mail at least sixty (60) days before the letter of credit may be cancelled, not renewed or expires. Upon notification, the beneficiary must be entitled to draw the entire amount of the letter of credit.
- Additional terms: The letter of credit must be irrevocable, non-transferable and non-assignable.
- Security: The letter of credit should indicate whether it is secured or not.

The Board may provide further guidance or direction as necessary.

(d) Line of Credit

Lines of credit from a financial institution meeting the following minimum requirements may be satisfactory:

- Issued by a bank acceptable to the Board;
- Be explicit as to the amount of Financial Resources covered;
- Provide the Company with funds on demand; and,
- Be accompanied by a description of the structure (and balance) of the line of credit including notice of cancellation, secured/unsecured, total amount, undrawn portion.

The Board will only rely on the undrawn portion of a line of credit in consideration of the sum of Financial Resources a Company is maintaining. The Board may direct Companies to report if the undrawn portion of a credit line drops below a certain threshold, as required.

The Board has also approved lines of credit from parent companies/affiliates, as acceptable Financial Resources, with the following attributes:

- Provides the Company with funds on demand and at its sole discretion;
- Provides funds within five (5) business days of written demand from the Company;
- Non-transferrable and non-assignable, except with prior written approval of the Board;
- Does not allow termination, amendment, or modification, except with prior written approval of the Board;
- Contains explicit provision to notify the Board in writing of any event of default, within two (2) business days of the guarantor or Company’s knowledge of default; and,

- Automatically renews and remains in force unless the Board has granted approval of alternative types of Financial Resources.

(e) Participation in a Pooled Fund

A Company may provide proof of its participation in a pooled fund to maintain Financial Resources. In the event a Company participates in a pooled fund, it must meet the requirements set out in section 5 of the Regulations.

Furthermore, the Board would expect that for a pooled fund to be satisfactory:

- Funds must be maintained in a segregated account and not be commingled with fund participants' general funds;
- The administrator of the fund must be an independent, third party acceptable to the Board;
- Funds must be protected from creditors;
- Funds must be protected from misuse or use for a purpose other than responding to a release;
- The pooled fund shall only be used for the purpose of meeting the financial resource requirements and shall not otherwise be encumbered; and,
- Funds must be liquid and payable to the Board within five (5) days of the Board's demand.

The Board would likely require that it review and approve the terms on which any pooled fund is created and administered. After such a review, the Board may provide further guidance or direction as necessary.

(f) Parent Company Guarantee

A parental guarantee agreement must provide proof that there are sufficient funds at a parent company level to cover the Financial Resources for its NEB-regulated Company. This parental guarantee agreement must be accompanied by the most recent audited financial statements of the parent company, as well as any subsequently completed unaudited quarterly statements and, if available, the most recent credit rating reports from the guarantor. The Financial Resources of the parent company will only be relied on for the amount of the guarantee agreement.

Furthermore, the guarantee should:

- Provide the Authorization holder with unconditional, on-demand access to funds;
- Specify the amount of the funds being guaranteed for the purpose of the Financial Resource Requirements established in the NEB Act and Regulations;
- Provide funds within five (5) business days of written demand from the Company;
- Be irrevocable, non-transferrable and non-assignable, except with prior written approval of the Board;
- Not allow termination, amendment, or modification, except with prior written approval of the Board;

- Automatically renew and remain in force unless the Board has granted approval of alternative types of Financial Resources; and,
- Require that in the event of default of either the guarantor or the NEB-regulated Company, the NEB be served notice of default within two (2) business days.

(g) Surety Bond or Pledge Agreement, or Indemnity Bond or Suretyship Agreement

The Board may consider a surety bond as proof of Financial Resources subject to the surety bond having terms as follows:

- The surety must be regulated by OSFI;
- The obligee must be the “Her Majesty the Queen in Right of Canada as represented by the National Energy Board”;
- The term of the bond must be indefinite. The bond may have a form of evergreen provision that automatically renews the bond unless notice of termination is given;
- The bond must be terminable by the surety providing sixty (60) days’ notice, with the obligee then having a further sixty (60) day period to make a written demand of the surety;
- The bond must be structured as an on demand instrument. This may be accomplished by requiring the surety to pay the bond amount upon receiving a written demand of the obligee;
- The bond must reference the underlying regulatory obligations of the principal. For Financial Resources, the bond should reference the NEB Act, specifically subsection 48.13(1), 48.13(3), (and 48.13(2) if applicable); and,
- The surety may fulfill its obligations under the bond by: (i) remedying the default, (ii) completing the pipeline Company’s obligations under the Financial Resource Requirements established in the NEB Act and Regulations, or (iii) paying the bond balance to the Board. If these options are set out in the bond, then the Board must have the discretion to choose among them.

The Board may provide further guidance or direction as necessary.

8. Ongoing reporting

8.1 Annual Reporting

Each Company must file annual updates to its Financial Resources Plan the Board, by 31 March each year. The annual filing must include the following:

1. An updated table, completed as per the format in Table 1 – Financial Resources Plan, in section 4.1 of the Guidelines above. The table should be updated with figures reflecting the Company’s Financial Resources as at its most recent year ended Audited Financial Statements.
2. An updated certificate of insurance, if insurance is maintained as part of the Company’s Financial Resources Plan, detailing:

- a. Coverage/policy types, and limits of each policy type;
 - b. Deductible amounts, per incident and policy type;
 - c. A list of insured parties under the policy(ies);
 - d. Effective date(s) and expiry date(s); and,
 - e. The insurance providers, and the providers' respective A.M. Best Ratings (or equivalent).
3. The Board may require other annual or periodic filings, as the Board may direct, if is of the view that such filings are necessary.

8.2 Material Changes to Financial Resources Plan

Each Company has an ongoing obligation to notify the Board in writing if there are, or if a Company has reason to believe that there will be, any material revisions to its Financial Resources or its Financial Resources Plan. This includes changes to a Company's financial position, significant draws of credit, or cancellation/amendments to insurance policies that may put at risk a Company's ability to maintain Financial Resources equal to its Absolute Liability limit or higher if ordered by the Board. These developments must be reported to the Board within five (5) business days. This also includes any reported change to a Company's ability to continue to operate as a going concern.

This also includes changes to a parent Company financial position, or corporate structure, such that a parent Company's ability to provide any pledged guarantee or funds via a line of credit may be impaired.

As part of its authority to conduct Financial Regulatory Audits, the Board may monitor, request information, and audit companies at any time to verify that the financial resource information reported is accurate.