MONTREAL PIPE LINE LIMITED
Safety, Environment, Customer, Community

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National Energy Board
Suite 210, 517 Tenth Avenue SW
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Attention: Ms. Sheri Young, Secretary of the Board

Dear Ms. Young,

Re: Montreal Pipe Line Limited (MPLL)
Comments on *Draft Pipeline Financial Requirements Guidelines*

In a letter dated February 15, 2019, the National Energy Board ("NEB") invited non-major oil pipeline companies to provide comments on the *Draft Pipeline Financial Requirements Guidelines* which 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. By March 8, 2019, companies operating non-major pipelines may submit comments on the draft guidelines issued by the NEB. MPLL has been following the implementation of the financial requirements very closely since the bill was proposed in 2015 and through the issuance of the regulations in the Canada Gazette Part II in July of 2018. MPLL has been actively communicating with the NEB and Natural Resources Canada throughout the process and preparing for compliance based on the content of the regulations and associated advisories published to date.

MPLL appreciates the opportunity to provide feedback and MPLL's comments on the *Draft Pipeline Financial Requirements Guidelines* are provided below, which we hope the NEB will take into consideration when finalizing the document.

Overview

MPLL is committed to ensuring that there are sufficient financial resources available to respond in the event of an unanticipated release. This was true even before the passage of Bill C-46, the *Pipeline Safety Act*. The company has maintained ready access to cash as well as a program of multiple layers of insurance for the purpose of responding to an incident. To date, MPLL and other pipeline companies have been relying on the Pipeline Safety Act Regulations published in the Canada Gazette II on July 11, 2018 to prepare and modify their respective plans for coming into compliance by the due date. Based on the regulations published in the Canada Gazette and the narrative and discussion provided with those regulations, MPLL was prepared to be in compliance with the expectation that only minor revisions may be needed to our plans in order to be compliant with any upcoming NEB guidance.

Reliance on Insurance

In Section 4.3 of the guidelines the NEB states that it 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 NEB notes that currently, insurance has not been accepted for more than 50% of a company’s Financial Resources requirement. The NEB specifically states that it expects companies to have sufficient resources to respond to an incident in a timely manner prior to insurance claims being made, processed, and paid. MPLL agrees with the Board that it is important for companies to have sufficient resources to respond in a timely manner, but respectfully disagrees that insurance cannot provide for this resource. We believe that the regulations already evaluated and considered the need for adequate resources early in a response, including concerns for the timely payment of insurance proceeds. In fact the regulations published in the Canada Gazette Part II specifically address these concerns, while also outlining a process that allows companies flexibility in meeting the requirements. The regulations specifically require companies to maintain 5 percent of the resources as ready cash precisely to meet this timely response concern. In the initial consultations by Natural Resources Canada with all interested parties, they proposed a 10 percent ready cash component in the regulations. After a very thorough consultative process in 2015 and 2016 which included engagement with a variety of key stakeholders (industry, government, non-government) and a review of historical spill data, Natural Resources Canada determined that the timing of other funding mechanisms (including insurance) in the event of a spill would not hinder the response. They decided that the requirement for 10 percent ready cash was not necessary to ensure adequate funding of an immediate response. Natural Resources Canada determined through its consultation and evaluation that 5 percent ready cash was a more appropriate requirement because the other funding mechanisms would respond in a timely fashion such that it would not hinder a response (reference October 8, 2016 Canada Gazette Part I “Consultation” section). The purpose of the readily accessible resources in the regulations is to ensure that companies can respond quickly in the event of an incident (reference July 11, 2018 Canada Gazette Part II “Description - Readily accessible portion” section). As currently drafted, the NEB guidance is effectively increasing the ready cash requirement of the regulations imposed on pipeline operators.

When there is a pipeline spill, insurance companies have a significant interest in ensuring an appropriate and immediate response to the event. Insurance companies have a substantial financial interest to get involved early in a response to make sure an appropriate response is financed so that the overall liabilities and claims are minimized. Response by insurance companies to past spills has demonstrated the industry’s rapid access to funds for pipeline operators to ensure this appropriate response. It is in the best interest of the insurance provider as well as the pipeline operator to assure that these types of events are responded to appropriately in the early days of an incident. MPLL insurance providers meet the highest A.M. Best ratings and our response plans include notifying our insurance provider immediately upon an event. We have confirmed with our insurance underwriters that insurance adjusters would be responding to the scene almost immediately to start dispersing funds and minimize claims. Also, the terms of our policies include a “pay on behalf of” provision which can be considered an accessible financial resource to respond to a release. These types of policies preserve an insured’s working capital by allowing the insurance company to pay vendors or third parties directly for costs incurred for the event response. This is unlike other types of insurance which may require the insured or pipeline to pay the costs first and then seek reimbursement. We believe insurance funds will closely follow the immediate access to the ready cash component of the financial requirements.

The regulations also indicated …"companies have flexibility to use the financial instrument(s) of their choice…" as stated in the "One-for-One" Rule section of the regulations, and the Small business lens section indicates "…how a company chooses to meet its financial resource requirements under the Act and these Regulations will be a business decision." Under the Rationale section of the July 11, 2018 Canada Gazette Part II, it appears clear that the intent was that the NEB would allow pipeline operators the flexibility to select the combination of financial resources that works best for them to comply with the regulations. Unless there was a scenario where the NEB had a specific concern regarding the pipeline company and needed to order a company to use a specific financial instrument, it states "a pipeline operator can maintain its required financial resources as it sees fit (i.e. it is a business decision). For example, a company could choose to hold its financial resources in cash and an insurance policy". The Small business lens paragraph also cites an example of a company meeting its financial requirements by using a combination of cash on hand and an insurance policy.

Based on the clear guidance in the regulations, MPLL has developed plans to meet its financial requirements by using a combination of cash on hand, lines of credit and an insurance policy. Insurance is a reasonable, cost efficient and practical method for non-major pipelines to protect against spill liabilities and has been used in the industry for many years to protect against the financial risks of a spill. Many of the other Financial Resources alternatives are either cost prohibitive or simply not available to non-major pipeline operators.

MPLL therefore respectfully requests that the NEB remove the language in the guidance document that would limit insurance coverage as an appropriate financial resource for substantially all of a pipeline's financial resources requirements above the ready cash component. MPLL has been following the regulations closely and based on prior discussions with regulators and guidance provided within the regulations we have developed a plan to comply with the regulations utilizing insurance as the primary financial resource. MPLL was prepared to comply within the time frame outlined in the regulations utilizing insurance. A change in acceptance of insurance for the financial resource could likely be challenging for non-major pipelines to comply within the time frame set out in the regulations.

If MPLL is not allowed to utilize insurance as the main source of financial resources above the minimum required readily accessible portion, MPLL respectfully requests more time to develop alternatives and to file its Financial Resources Plan beyond the current due date of April 16, 2019.

Restrictions on Line of Credit or Parental Guarantee from Parent/Affiliates

MPLL requests that the NEB reconsider some of the attributes required for a parent company/affiliate line of credit or parental guarantee. Specifically MPLL requests that the Board remove the requirement that the terms of these agreements include automatic renewals and NEB approval for termination, amendment, or modification. These conditions are not mandated under the guidelines for agreements with financial institutions and should not be required for parent company/affiliate agreements. Whether the agreement is with a parent organization or a financial institution, MPLL is responsible for complying with the Financial Resources Plan that has been approved by the Board. A decision by the company to terminate or modify the agreement would only be made upon acceptance from the Board for the change. This requirement should rest with the company and not be imposed on other parties to the agreement. MPLL believes it is unnecessary to require this additional language in the agreements between the parties. Simply requiring MPLL to obtain approval from the NEB prior to any changes to the agreements is a reasonable requirement and would ensure the company maintains approved financial resources for a response, but it is unnecessary to require this wording in the terms of the agreement between the parties.

Closing Comments

To summarize, MPLL is requesting the NEB consider the following changes to the guidelines:

- Remove the language that limits insurance coverage as an appropriate financial resource for substantially all of a pipeline's financial resources requirements above the ready cash component.
- Remove the requirement that the terms of agreements with parent company/affiliates for line of credit and parent company guarantees include automatic renewals and NEB approval for termination, amendment, or modification.

MPLL appreciates the NEB's willingness to consult with industry on the implementation of the regulations regarding the *Pipeline Safety Act,* in particular the *Draft Pipeline Financial Requirements Guidelines*. MPLL is willing to participate in future discussions or answer any questions the NEB might have regarding the points made above. If you have any questions or concerns regarding the information above please feel free to contact Chris Gillies at (207) 767-0441 or chris.gillies@pmpl.com or the undersigned using the contact information above.

Best Regards,

T.A. Hardison

Thomas A. Hardison
President

cc: Miguel Robin, MPLL Quebec Operations Manager