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BY ELECTRONIC FILING

Canada Energy Regulator
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ATTN: Dan Barghshoon
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**Re: PLAINS MIDSTREAM CANADA ULC
Onshore Pipeline Regulations Review**

To Whom It May Concern,

As one of the largest midstream service providers in North America, Plains owns an extensive network of pipeline transportation, terminaling, storage and gathering assets in key crude oil and natural gas liquids producing basins, transportation corridors and major market hubs in the United States and Canada. Plains owns over 19,000 miles of liquids pipelines in the United States and Canada, and on average, handles more than 6 million barrels per day of crude oil and natural gas liquids.

Plains appreciates the effort made by the Canadian Energy Regulator (CER) to conduct a comprehensive review of the Onshore Pipeline Regulations (OPR), which under the CER Act aims to update the regulations, and through its Discussion Paper, solicit feedback from external stakeholders, the Indigenous community, and the wider industry.

Plains would like to emphasize that while outpacing every single G7 country in regulatory quality by country, Canada falls far behind its peers when it comes to its ease of doing business, with a high ease of doing business ranking meaning that the regulatory environment is more conducive to the inception and operation of firms within a country. Plains acknowledges that it is of the utmost importance that Canada and its various institutions such as the CER have robust regulatory guidelines in place to ensure



compliance and safety. In its current iteration, Plains believes that with the current, ample framework set out by the OPR, any further additions would produce an overabundance of direction by the CER, causing the industry at large to experience falling productivity, commercialization, and competitiveness in order to meet further burdensome amendments.

Following a thorough internal review, Plains has the following comments on the CER's six sections of the OPR review, addressing both the expansion and improvement of existing requirements, and the new regulatory considerations:

Section 1. OPR – Lessons Learned

As outlined in the discussion paper, the OPR requires regulated companies to establish, implement and maintain management systems and protection programs to anticipate, prevent, manage, and mitigate conditions that may adversely affect the safety and security of the company's pipelines, employees, the public, as well as property and the environment. The CER identified this topic as a section for improvement. In general, Plains is satisfied with the OPR's implementation, and believes that in its current state of compliance, is sufficient and does not require additional regulatory and/or legislative burden to companies.

In response to: *What's working well in relation to the OPR, and its implementation, and what could be improved?*

Plains has found the CER's sharing of Lessons Learned from audits helpful for all operators. Using CER findings from operator audits as one of the measures used in their internal assessments/compliance assurance, has allowed for continuous, internal improvement of Plains operations

Section 2. Reconciliation with Indigenous Peoples

The CER Act states that the Government of Canada is committed to achieving Reconciliation with First Nations, the Métis, and the Inuit through renewed nation-to-nation, government-to-government, and Inuit-Crown relationships based on recognition of rights, respect, cooperation, and partnership.

Before addressing the topic proposed by the CER regarding the OPR review, it is suitable to recall that on June 21st, 2021, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) Act received Royal Assent and came into force. UNDRIP provides a roadmap for the Government of Canada and Indigenous peoples to work together to implement the Declaration based on lasting reconciliation, healing, and cooperative relations. UNDRIP will holistically ensure that the Government of Canada will work in consultation and cooperation with First Nations, Inuit and Métis, hereby, incorporating reconciliation into all regulatory and legislative material pertaining to the CER and CER regulated companies, like Plains. In the review of the OPR by the CER, this topic has been identified as both a new requirement, and an area of expansion of existing criteria.

In response to: *How can the OPR contribute to the advancement of Reconciliation with Indigenous peoples?*

Plains is pleased that funding was provided to indigenous groups to support their response to the OPR. Through this funding, the CER will allow for a more coordinated response for indigenous engagement and community involvement. The CER should acknowledge the multitude of economic benefits that the OPR currently contributes, through career training, job opportunities, resources, and social supports brought to Indigenous communities, creating stronger economic partnerships between CER regulated industries and its First Peoples.

As mentioned in the preamble to Plains' response to Section 2, the Government of Canada brought the UNDRIP Act into law in June of last year. In turn, as stated by the CER in December of 2020:

Our work is guided by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the Calls to Action of the Truth and Reconciliation Commission, and the principles respecting the Government of Canada's relationship with Indigenous Peoples.

In acknowledgement of both UNDRIP and the CER's alignment with such principles, Plains believes that the OPR is not an appropriate regulatory mechanism to modify, amend or dictate the path that the complex matter of reconciliation takes in regard to Indigenous peoples and their engagement with CER regulated companies. As being guided by both the Government of Canada and the CER, it is recommended that the OPR follow the direction of these bodies, who will ultimately continue to address Reconciliation in meaningful and comprehensive ways.

Section 3. Engagement and Inclusive Participation

The CER Act affirms the Government of Canada's commitment to transparent processes built on early engagement and inclusive participation. As with the CER, Plains is and has been committed to fostering trust and confidence through robust communications, transparency, collaboration, and inclusive engagement. The CER has long held the expectation its regulated community take a proactive approach to communication and engagement as they conduct regulated activities. Plains has identified the CER's approach to this section of Engagement and Inclusive Participation to explore both new requirements and expanding existing criteria.

In response to: *How can the OPR support collaborative interaction between companies and those who live and work near pipelines?*

Receiving Royal Assent on June 21, 2019, Bill C-69 repealed and replaced the Canadian Environmental Assessment Act, 2012 with 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. In Part 1 of the Bill (Impact Assessment Act), Enacting Clause b:

provides for a process for assessing the environmental, health, social and economic effects of designated projects with a view to preventing certain adverse effects and fostering sustainability.

The *Canadian Energy Regulator Act* Part 3 amends the *Navigation Protection Act*, among other things in Enacting Clause c:

require(s) that, when making a decision under that Act, the Minister must consider any adverse effects that the decision may have on the rights of the Indigenous peoples of Canada.

Through the current Clauses of Bill C-69 and its compliance directions, Plains does not consider the further analysis of interaction between companies and those who live and work near pipelines to be a necessary step in reviewing the OPR. Instead, the CER should continue to enforce such measures in the legislation that has been provided.

Along with the comprehensive Bill C-69, as well as the exhaustive framework laid out by Plains that has been used to consult with all communities and individuals affected by Plains' operations, Plains does not believe that current regulatory or legislative stipulations need to be considered for amendment. Considering the vast array of cultures, identities, and peoples with whom Plains consults, it would be overly prescriptive for the OPR to layout further direction for the industry at large. A more efficient approach would be for the CER to consider and recognize the community and/or stakeholder relations of each company and whether they meet the needs of those specific communities.

In response to: *Gender and other intersecting identity factors may influence how people experience policies and initiatives. What should the CER consider with respect to:*

- a) those people implementing the OPR; or*
- b) those people who are impacted by the operational activities addressed in the OPR?*

In assessing how groups of women, men, and gender-diverse people may experience policies, programs, and projects, the CER has been considering the gender-based analysis plus (GBA Plus) to be an analytical tool to further evaluate companies in respect to the various identities they impact.

While the GBA Plus is inclusive in assessing the potential impacts of policies, programs, services, and other initiatives on diverse groups (including many other identity factors, such as ethnicity, language, geographical region of residence, disability status, religion, age and family status), the CER in reviewing the OPR does not require further legislative tools in this space, as many structures are and have been in place to address such matters of discrimination, inclusive participation and workplace equality.

Assented in 1995 and amended in 2017, the *Employment Equity Act* (S.C. 1995, c. 44) relays the purpose of the act:

... to achieve equality in the workplace so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability and, in the

fulfilment of that goal, to correct the conditions of disadvantage in employment experienced by women, Aboriginal peoples, persons with disabilities and members of visible minorities by giving effect to the principle that employment equity means more than treating persons in the same way but also requires special measures and the accommodation of differences.

Assented in 1985 and amended in 2017, the Canadian Human Rights Act (R.S.C., 1985, c. H-6) relays the purpose of the act:

... to extend the laws in Canada to give effect, within the purview of matters coming within the legislative authority of Parliament, to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability or conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

Mentioned in both the preamble, and specifically addressed in clause 22 (1) of Factors to Be Considered of Bill C-69:

The impact assessment of a designated project, whether it is conducted by the Agency or a review panel, must take into account the following factors:

(s) the intersection of sex and gender with other identity factors

Considering the ever-evolving conversations of identity and intersecting identity factors that continue to influence and alter existing legislation, to provide specific guidance in a rigid framework such as the OPR's would be ineffectual, as the OPR is not flexible enough to keep up with the current changes and conversations. The existing legislation does not necessitate that the CER provide new or amended requirements on such topics of Engagement and Inclusive Participation.

Section 4. Global Competitiveness

As mentioned in the preamble, while Canada outpaces its international peers in terms of regulatory quality, it falls behind when it comes to measures of competitiveness, commercialization and productivity.

As it is of the utmost importance that Canada practices robust regulatory procedures to ensure compliance and safety, such regulations must also ensure that they do not impede on the pace or thruput of Canada's global competitiveness.

In response to: *How can the OPR support a predictable and timely regulatory system that contributes to Canada's global competitiveness?*

Plains believes the CER has the right approach in providing guidelines for event reporting and an online portal to do so. For additional clarity and consistency, the CER should provide guidance on how it interprets and enforces the most

commonly cited non-compliances. As well, the CER should focus heavily on goal-oriented regulation, requiring companies to pursue the following:

- Achieve a desired goal, state, or end result
- Promote or rely on consensus standards, such as CSA Standards, for clarity and consistency
- Allow flexibility for regulated companies to use technological advances, alternate approaches, and innovation; and
- Clearly place the onus on companies for meeting the regulation.

In response to: *How can the OPR support innovation, and the development and use of new technologies or best practices?*

Plains recommends that when incorporated by reference, consideration should be given by the CER when writing the regulation, to allow the use of the most recent version of a standard, as opposed to citing a specific version. This will allow for a simplified, straightforward approach to ensure compliance.

In response to: *How can the OPR be improved to address changing pipeline use and pipeline status?*

Plains believes that the CER should provide clear definitions of each pipeline status, as well as providing examples of what a change in status from one to the other might look like under various operational scenarios.

For example, there is a difference between providing a pipeline in a certain footprint in a solitary state versus in a footprint with other active pipelines and/or facilities for context.

Section 5. Safety and Environmental Protection

In assessing the requirements for safety and environmental protection outcomes through management systems and program requirements, the CER has highlighted Section 5 as a section for improvement and requires an expansion of existing requirements. However, Plains does not believe that further clarification, in either the OPR, or in guidance, would support company interpretation and implementation of management system requirements.

In response to: *How should the OPR include more explicit requirements for process safety?*

The CER addresses all risk elements through OPR 6.5(1) (c,d,e,f). Industry standards for corporations support comprehensive process safety related activities that are not specifically directed by the CER. The implementation of explicit requirements for process safety by the CER could reduce the optionality that companies currently have when it comes to the implementation of management systems and program requirements. Plains believes that companies benefit in finding alignment with their current approach and proposing methods that support their existing processes, and no oversight by the CER is necessary.



Section 6. Implementation Objectives

The stated goal of the CER in reviewing the OPR is that objectives and topics outlined in the discussion paper would support the implementation of an updated OPR, and in seeking industry input to aid in such planning, Section 6 was identified as a section for improvement.

In response to: *What are your recommendations for compliance promotion at the CER?*

Plains agrees with the use of company compliance meetings, safety and information advisories, and technical workshops, as needed. As discussed in previous sections, consultation must be included without overburdening the industry, and should focus on the information that is of value to the CER.

Plains supports the development, review, and update of compliance requirements, as well as service standards or other guidance regarding the CER's OPR where it supports the goals of the OPR. Properly designed, documents such as these enhance federal regulatory process clarity, predictability, and timing certainty. Please consider the comments and suggestions raised by Plains and its various stakeholders when undergoing the final review of the proposed topics.

Yours sincerely,



Manager, HSE Regulatory Compliance