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Designated Officer Regulations Team
National Energy Board
Suite 210, 517 Tenth Avenue SW
Calgary, Alberta T2R 0A8

Submitted via email to: nrcan.designatedofficer-responsablesdesignes.nrcan@canada.ca

Attention: Carly Milne, Regulatory Development Specialist

Dear Ms. Milne,

Re: TransCanada Comments on Discussion Paper on Designated Officer Regulations

TransCanada Corporation (TransCanada) is writing to provide its comments in response to the *Discussion Paper: Designated Officer Regulations* (the Discussion Paper) recently released by the National Energy Board (NEB) and Natural Resources Canada.

With more than 65 years of experience, TransCanada is a leader in the responsible development and reliable operation of North American energy infrastructure including natural gas and liquids pipelines, power generation and gas storage facilities. As a highly regulated enterprise, TransCanada has experience working within the existing regulatory frameworks in Canada and elsewhere in North America and is uniquely suited to provide comment as the Government develops the proposed *Designated Officer Regulations* (the Regulations) and other Canadian Energy Regulator (CER) regulations and guidance under Bill C-69.

TransCanada supports the Government's efforts to provide efficient decision-making for authorizations that are primarily technical or administrative in nature. Clear, predictable and timely regulatory processes will enhance Canada's competitiveness and create an environment where energy infrastructure projects can continue to meet construction and operational timelines and provide economic benefits.

Efficient decision-making is an important aspect of the life-cycle regulatory process for developers and operators of energy infrastructure projects. TransCanada notes that the *Nuclear Safety and Control Act* contains provisions relating to the decision-making roles and responsibilities of Designated Officers and Commissioners of the Canadian Nuclear Safety Commission (CNSC). The experience of the CNSC demonstrates a significant reduction in technical and administrative decision-making by the CNSC Commissioners. For example, the 2016 CNSC Annual Program Report stated CNSC Designated Officers were involved in more than 1,000 CNSC regulatory decisions and more than 4,000 regulatory authorizations that year.¹

After reviewing the Discussion Paper, TransCanada's primary concern is that the proposed Regulations may impose a criteria-based screening on a case-by-case basis to determine whether a decision is "technical or administrative in nature". Such an approach would run counter to the goal of efficient decision-making, while increasing legal risk and inviting consideration of broad public policy matters into routine technical decision-making. TransCanada recommends that any criteria test be used during the development of the Regulations to establish a list of activities over which Designated Officers have decision-making authority. This activity-based list should be included as a Schedule to the Regulations, which will provide clarity and lead to more timely and efficient decision-making on matters that are of a technical or administrative nature.

¹ <http://nuclearsafety.gc.ca/eng/the-commission/meetings/cmd/pdf/CMD18/CMD18-M10-Status-of-the-DO-Program-2016-Report.pdf>

TransCanada submits that once a determination on the public interest has been made through approval of a project application, a number of technical or administrative decisions that follow during construction, operations, maintenance, decommissioning and abandonment can and should be made by Designated Officers. Based on the criteria outlined in the Discussion Paper, TransCanada has prepared Appendix 1 as a preliminary listing of technical or administrative decisions that could be delegated to the Designated Officers throughout the project life-cycle.

With respect to the Discussion Paper questions regarding technical or administrative decisions that ought to be referred to the Commission, TransCanada submits that the appeal mechanism in section 71 of the proposed *Canadian Energy Regulator Act* is sufficient to deal with escalation to the Commission. Annual monitoring and reporting on the number and type of decisions made by Designated Officers will also provide oversight and a basis to consider changes to the Regulations. However, should the Regulations include the power for a Designated Officer to refer the matter to the Commission as suggested in the Discussion Paper, TransCanada submits such a power should be exercised on an exception basis and based on narrow and clearly defined criteria.

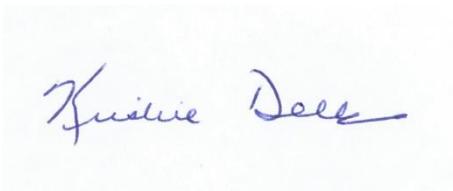
TransCanada also recommends that once an activity-based list is developed, timing or service standards under which the Designated Officer would issue such decisions should also be developed. The Regulations should also clarify whether a CER Inspection Officer can also be a Designated Officer for projects that they are responsible to inspect and report on.

Finally, TransCanada recommends that the Regulations and reporting functions be patterned, where feasible, after the procedures of the CNSC. For example, the CNSC has ongoing training and certification of Designated Officers, a decision-making hierarchy within the organization and annual monitoring of decisions made by Designated Officers.

TransCanada appreciates the opportunity to provide comments on the Discussion Paper. TransCanada believes that the balancing of regulatory oversight and efficiency favors a wide scope of decision making for Designated Officers. The effective delegation of technical and administrative decision-making to Designated Officers within the CER, using an activity-based approach, would provide regulatory efficiencies in pipeline construction, operations and maintenance, and decommissioning and abandonment activities.

TransCanada looks forward to future discussions and opportunities to provide comment on the Designated Officer Regulations as they are developed during the Bill C-69 consultation process.

Yours sincerely,



Kristine Delkus
Executive Vice-President, Stakeholder and Technical Services and General Counsel

Cc: The Honourable Amarjeet Sohi, P.C., M.P. Minister of Natural Resources. Submitted via email to Minister.Ministre@NRCan-RNCan.gc.ca.

Attachment

APPENDIX 1

Designated Officer Decision-Making Authorities: Activity-Based Approach

Construction & Commissioning Decisions

- All minor route variances or temporary work space changes
- All changes to technical specifications (length, grade, diameter wall thickness, coating of pipe etc.)
- All Certificate or Order compliance conditions specified in the Certificate or Order as requiring approval of the Designated Officer
- Inspection and Safety Orders
- Leave to Open (LTO) for new pipelines, compressor stations, pump stations, meter stations and tanks
- Non-compensation related landowner, Indigenous and stakeholder complaints
- All stop work / return to work orders
- All other matters related to CSA Z662 and other technical standards

Operations & Maintenance Decisions

- All compliance conditions requiring approval of the Designated Officer
- Reactivations and s.43 OPR decisions (increase in licensed MOP or change in service)
- Authorize return to flow status at appropriate operating pressure following an event or incident
- Integrity and engineering assessments
- Inspection and Safety Orders
- Non-compensation related landowner, Indigenous and stakeholder complaints
- All stop work / return to work orders
- Class location changes
- All other matters related to CSA Z662 and other technical standards

Deactivation, Decommissioning & Abandonment Decisions

- If no hearing is required, Designated Officer review and decision for deactivation or decommissioning
- All condition compliance decisions requiring approval of the Designated Officer
- Inspection and Safety Orders
- Non-compensation related landowner, Indigenous and stakeholder complaints
- All stop work / return to work orders
- All other matters related to CSA Z662 and other technical standards