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December 18, 2013

Ms. Sheri Young  
Secretary of the Board  
NATIONAL ENERGY BOARD  
444 – Seventh Avenue S.W.  
Calgary, Alberta T2P 0X8

Dear Ms. Young:

**RE: MINELL PIPELINES LTD. (“MINELL”)  
NOTICE OF PROPOSED REGULATORY CHANGE 2013-01**

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By letter dated November 18, 2013, the National Energy Board (“NEB”) issued Notice of Proposed Regulatory Change (“NOPRC”) 2013-01 proposing to amend its regulations relating to damage prevention. NOPRC 2013-01 outlined a number of proposed amendments to the *National Energy Board Pipeline Crossing Regulations, Part I* (PCR Part I), *National Energy Board Pipeline Crossing Regulations, Part II* (PCR Part II), and *National Energy Board Onshore Pipeline Regulations*.

The NEB also invited all regulated companies and interested parties to provide comments on the proposed amendments and the type of guidance that may be required to accompany the proposed sections contained in NOPRC 2013-01. Manitoba Hydro, on behalf of its wholly-owned subsidiary Minell, hereby provides the following comments in respect of the proposed amendments.

Minell is a Group II pipeline which originates at an interconnection with the TransCanada Pipeline Ltd. Mainline System near Moosomin, Saskatchewan, and terminates at the interconnection with the distribution system of Centra Gas Manitoba Inc. (“Centra”) near Russell, Manitoba. It is approximately 70 km in length. Both Minell and Centra are wholly-owned subsidiaries of Manitoba Hydro, and their natural gas systems are operated on an integrated basis.

#### **Proposals in respect of effective and timely communication**

In accordance with NOPRC 2013-01, PCR Part I will be amended to require anyone planning construction or excavation within the area prescribed by the *National Energy Board Act* to make a locate request by contacting a One-Call centre, or the pipeline company directly when a One-Call centre is not established, at least three working days before the day on which the construction or excavation is to start. PCR Part II will also be amended to require pipeline companies to be members of One-Call centres in geographical areas where a centre exists and the company has a pipeline.

Manitoba Hydro does not presently belong to an external One-Call centre. Instead, Manitoba Hydro has its own Call Before You Dig program in place whereby potential excavators contact the company directly to arrange for electric and natural gas line locates in accordance with the laws of Manitoba. As indicated above, Manitoba Hydro and its two subsidiaries operate on an integrated basis, and locate requests under the Call Before You Dig program cover Manitoba Hydro's entire natural gas transmission and distribution system. The Call Before You Dig program has worked effectively in preventing damages to the Minell pipeline system arising from third party construction or excavation activities.

In addition to the above, there are provincial legislative requirements that, at present, prevent Manitoba Hydro from participating in an external One-Call/One-Click program. Manitoba Regulation 140/92, a regulation made pursuant to the *Gas Pipeline Act*, requires that Manitoba Hydro obtain written confirmation of gas pipeline locations from excavators in the form of a signed Line Location Request form. Manitoba Hydro must arrange appointments with excavators to sign off line location requests, and the work processes associated with this requirement limit Manitoba Hydro's ability to effectively participate in an external One-Call/One-Click service.

For the above noted reasons, Manitoba Hydro is of the view that a specific provision should be incorporated within the language of the regulation to permit the NEB to exempt small Group 2 pipelines, in circumstances similar to Minell, from the requirement to be a member of a One-Call centre. In Manitoba, potential excavators would continue to be required to contact the company directly through the existing Call Before You Dig program in accordance with the existing laws of Manitoba. Accordingly, Manitoba Hydro would also propose that PCR Part I be amended to require that anyone planning construction or excavation within the prescribed area make a locate request by contacting a One-Call centre, or the pipeline company directly when it does not belong to a One-Call centre.

### **Proposals in respect of safe work practices for construction and excavation**

In accordance with NOPRC 2013-01, PCR Part I will be amended to clarify that any project owner who undertakes any construction or excavation activities to which the regulation applies will be responsible for the supervision and monitoring of all persons working on behalf of the project owner, including employees, contractors and sub-contractors.

Manitoba Hydro often contracts with other parties to undertake construction or excavation work on its behalf. Third party contractors working on behalf of the company have an obligation to comply with all specifications, restrictions and work safety requirements provided by the company for excavation and exposure of the pipe as contained in the contractual documents and as may otherwise be required at law. Manitoba Hydro has inspectors on site to monitor the work being performed by third party contractors to ensure that the work is undertaken in accordance with the contractual requirements. However, inspectors do not act as "supervisors" of the contractor or its employees as is defined by provincial workplace and safety legislation. It is a direct obligation of the contractor to supervise its own employees, and not Manitoba Hydro as a "project owner" in these circumstances. As such, Manitoba Hydro respectfully requests clarification between the "supervisory" role performed directly by a contractor and the role proposed for a "project owner" as part of the amendment.

### **Proposals in respect of Damage Prevention Programs**

In accordance with NOPRC 2013-01, PCR Part I will be amended to require pipeline companies to have a Damage Prevention Program which includes, among other components, “a process to manage the movement of vehicles and mobile equipment across the pipeline”.

Currently, it is not clear to Manitoba Hydro as to what is specifically intended to be managed through this component of the program. More explicitly, is the “process to manage the movement of vehicles and mobile equipment across the pipeline” referring to a process for developing, updating, communicating and implementing crossing guidelines to land users, or alternatively, a process to monitor actual crossings of the right-of-way with agricultural vehicles and mobile equipment by third parties? Manitoba Hydro believes the intention is for the former, however respectfully requests clarification on this point.

### **Summary**

In summary, Manitoba Hydro appreciates the opportunity afforded by the NEB to comment on the proposed amendments, and the ongoing industry efforts to further the development and promotion of safe practices for excavation and construction activities to prevent damage to pipelines. Should you have any questions or require clarification regarding this submission, please contact the writer directly at (204) 360-3257 or Greg Barnlund at (204) 360-5243.

Yours truly,

**MANITOBA HYDRO LAW DIVISION**

Per:



Brent A. Czarnecki  
Barrister and Solicitor