

National Energy
Board



Office national
de l'énergie

File OF-Surv-AMP-001-2017
7 December 2017

Mr. Jasvinder Aujla
Mr. Kulwant Cheema
Landstar Projects Ltd.
16726 – 40 Avenue
Surrey, BC V3Z 1E5
Email [REDACTED]

Mr. Robert Steedman
AMP Officer
National Energy Board
Suite 210, 517 - 10 Avenue S.W.
Calgary, AB T2R 0A8

Dear Messrs. Aujla, Cheema, and Steedman:

**Landstar Projects Ltd. (Landstar)
Request to Review AMP-001-2017**

The Administrative Monetary Penalty (AMP) Officer issued a Notice of Violation (NOV) to Landstar on 15 May 2017 for failure to excavate as prescribed or to obtain leave, per subsection 6(b) of the *Pipeline Crossing Regulations, Part 1 (National Energy Board Act)* (PCR, Part 1), provisions in force at the time of the violation, in the amount of \$28,000.00. The NOV related to an excavating activity carried out on/about 12 January 2016, by a contractor of Landstar, within 30 metre (m) from the edge of the pipeline right of way of the Kinder Morgan Canada TransMountain Pipeline Mainline (KMC TransMountain Mainline).

On 15 June 2017, the National Energy Board (NEB or Board) received Landstar's Request for Review of the NOV. The Board issued a letter on 6 July 2017, setting out the process through which the review would be considered. The Board notes that Landstar provided no further submissions to the Board after its 15 June 2017 letter. The Board has received the materials included in the AMP Officer's Disclosure Package of 17 July 2017, as well as the AMP Officer's submission of 15 September 2017. The Board notes that Landstar received both the Disclosure Package and AMP Officer's submission as well.

The Board conducts reviews pursuant to section 147 of the *National Energy Board Act* (NEB Act). For the reasons that follow, the Board has determined that Landstar has committed the violation and that the amount of the penalty was determined in accordance with the *Administrative Monetary Penalties Regulations (National Energy Board Act)* (AMP Regulations).

Violation

The NOV cited the failure to excavate as prescribed or to obtain leave, pursuant to the PCR, Part 1, related to the activities carried out by A&G Excavating Ltd., an agent of Landstar, on/about 12 January 2016.

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Subsection 6(b) of the PCR, Part 1, states:

Leave of the Board is not required for an excavation, other than an excavation referred to in section 7, if

(b) the excavator obtains written permission from the pipeline company prior to the excavation and accepts any conditions set out in the permission;

The PCR, Part 1, and the NEB Act, as in force at the time of the alleged violation, set out a regime whereby certain activities, including excavation, were prohibited within 30 m from the edge of the pipeline right of way, unless leave of the Board or permission of the company operating a pipeline was first sought and obtained.

In its Request for Review, Landstar said that A&G Excavating Ltd. was “given all the information, the excavator was far from the pipeline”.

The record of this proceeding provided clear and undisputed evidence that there was an excavation activity within 30 m from the edge of the pipeline right of way of the KMC TransMountain Mainline. This excavation activity was conducted by A&G Excavating, a contractor of Landstar, as discovered and reported to the Board by an employee of Kinder Morgan Canada.

The record here clearly establishes that Landstar, as the responsible company who provided direction to A&G Excavating, failed to comply with the requirements to seek leave of the Board or permission of the company for the excavation activities which took place.

Landstar has not, therefore, raised a doubt as to whether the alleged violation occurred and was attributable to Landstar.

Penalty Amount

In its Request for Review, Landstar submitted that the penalty amount was “very excessive” as there was no damage to the pipeline and “costs to fix anything.”

The AMP Regulations set out the manner of calculating penalties. Here, the baseline amount for a Type B violation of this nature, committed by someone other than an individual, is \$40,000.00. The AMP Regulations, in section 4, set out nine criteria that the AMP Officer must consider as either aggravating or mitigating the gravity value.

The AMP Officer applied a mitigating factor of -1, reducing the penalty to \$28,000.00, owing to Landstar’s submissions to Board staff that it would take steps to prevent the reoccurrence of such acts in the future.

In the context of this particular violation, lack of damage to the pipeline and costs are not factors that could be applied to reduce or mitigate the penalty amount.

Accordingly, the Board finds that the AMP Officer determined the amount of the penalty in accordance with the AMP Regulations.

Pursuant to subsection 147(4) of the *National Energy Board Act*, Landstar Projects Ltd. is liable to the penalty as set out in the NOV.

Yours truly,

Original signed by

Sheri Young
Secretary of the Board