January 25, 2016

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Sent via email: rule-comments@sec.gov

Re: Proposed Rules Regarding Disclosure of Payments by Resource Extraction Issuers (Release No. 34-76620; File No. S7-25-15)

Encana Corporation ("Encana") appreciates the opportunity to provide comments on the Securities and Exchange Commission's ("SEC") proposed rules regarding Disclosure of Payments by Resource Extraction Issuers pursuant to Section 13(q) of the Securities Exchange Act of 1934, as amended ("Proposed Rules").

Encana is a leading North American energy producer, listed on the Toronto Stock Exchange and the New York Stock Exchange. Encana reports under generally accepted accounting principles in the United States ("U.S. GAAP").

As Encana is listed on the Toronto Stock Exchange, we are required to report payments annually under the Canadian disclosure regulation, Extractive Sector Transparency Measures Act ("ESTMA"), which was brought into force in June 2015. We believe the SEC rules should more closely align to the disclosure requirements established by other reporting jurisdictions including the European Union Directives ("EU Directives") and ESTMA. We believe that multiple compliance frameworks will unnecessarily increase costs for issuers, with little incremental benefit in achieving greater transparency of payment disclosures.

Encana's responses to questions where we have concerns, are requesting additional clarification or made recommendations are attached in the Appendix to this letter.

If you have any questions or would like to contact us for outreach please do not hesitate to contact myself at [redacted] or by email at [redacted].

Sincerely,

Stephen Dyck
Vice-President, Finance & Comptroller

Appendix – Responses to Proposed Rules Regarding Disclosure of Payments by Resource Extraction Issuers (Release No. 34-76620; File No. S7-25-15)

Definition of "Commercial Development of Oil, Natural Gas, or Minerals" (Questions 6, 8, 9, 11)

We recommend additional guidance be provided to clarify the activities covered by the proposed terms used to define "commercial development of oil, natural gas, or minerals" in order to ensure consistent application of activities in scope. Additional guidance provided should:

- reflect consistency with the SEC's existing definition of "Oil and Gas Producing Activities" under Rule 4-10 of Regulation S-X;
- clarify that processing should only include initial processing activities that are integrated with extraction operations;
- exclude post-extraction activities such as refining, smelting or processing of oil, gas or minerals, as well as the associated marketing, distribution, transportation or export; and
- clarify that commercial development does not extend to ancillary or prepatory activities such as manufacturing equipment or construction of extraction sites.

The definition of "commercial development of oil, natural gas, or minerals" and additional guidance provided should capture activities that are consistent with those reflected in the EU Directives and ESTMA.

Types of Payments (Questions 13, 14, 15)

The payment types proposed are consistent with the payments identified through other recently enacted international transparency efforts including the EU Directives and ESTMA. We believe payments disclosed must reflect payments that are part of the commonly recognized revenue stream for the commercial development of oil, natural gas or minerals.

Payments considered part of the commonly recognized revenue stream must directly relate or be expressly made in exchange for the right or ability to further the commercial development of oil, gas or minerals. We believe payment types, such as social or community payments are not considered part of the commonly recognized revenue stream as they are philanthropic or voluntary in nature. Likewise, we do not believe the commonly recognized revenue stream for the commercial development of oil, natural gas or minerals includes payments made in ordinary course commercial transactions for services that may be provided by governments (i.e. payments made to a state-owned utility for electricity used in extraction operations).

Additional interpretative guidance on the types of payments covered would improve consistency in the application of the rules provided the guidance is consistent with the Extractive Industries Transparency Initiative ("EITI") Guidelines, EU Directives and ESTMA.

We also recommend that in-kind payments be reported at cost or fair market value, as determined appropriate by the issuer, and that the issuer disclose the methodology used to determine the monetary value. Under ESTMA, in-kind payments are reported at the cash value of the production entitlements that the payee takes possession of during the relevant financial period.

Payments by "a Subsidiary...or an Entity Under the Control of…" (Question 20, 22)

For purposes of determining control, we believe issuers should follow the consolidation requirements under U.S. GAAP or the International Financial Reporting Standards as issued by the International Accounting Standards Board ("IFRS"), as applicable. Generally, under both U.S. GAAP and IFRS, consolidation of another entity's operations and results are based on the control model. Control is defined as the power to govern the entities financial and operating policies. As a result of the control relationship, access to payment information would be readily available to the issuer.

However, the principles of proportionate consolidation do not reflect situations that meet the definition of control under either U.S. GAAP (ASC 810: *Consolidations*) or IFRS (IFRS 10: *Consolidated financial statements*). As the proposed definition of control must align to the accounting principles, we recommend that arrangements resulting in proportionate consolidation be addressed separately from the definition of control, which is prescribed under ASC 810 and IFRS 10. As a result, we recommend the following changes to the Proposed Rules:

(1) Issuers must report on all payments made by the issuer and by any entity controlled by the issuer.

(2) The definition of control be modified as follows:

"Control means that the resource extraction issuer consolidates ~~the entity or proportionately consolidates an interest in~~ an ***entity*** *~~or operation~~* ***including corporate subsidiaries, partnerships, trusts and unincorporated organizations*** *under the accounting rules applicable to the financial statements of a resource extraction issuer's period reports filed pursuant to the Exchange Act (i.e., under generally accepted accounting principles in the United States (U.S. GAAP) or International Financial Reporting Standards as issued by the International Accounting Standards Board (IFRS), but not both).* ***Control also extends down an organization chain (i.e. an entity that is controlled by another controlled entity).*** *A foreign private issuer that prepares financial statements according to a comprehensive set of accounting principles, other than U.S. GAAP or IFRS, and files with the Commission a reconciliation to U.S. GAAP must determine control using U.S. GAAP."*

(3) Replace paragraph 5 under the subtopic *"Payment Disclosure"* included in "*Instructions to Item 2.01"* with the following instruction:

*"**Reporting of payments made in situations of joint control***

In situations of joint control or where no entity controls a business arrangement that includes two or more partners, resource extraction issuers involved should consider the following requirements:

1) If a resource extraction issuer makes a payment, they must report it. This could be a payment made as an operator of a joint arrangement or as a member of a joint arrangement.

2) If a payment is made by an entity not subject to the requirements of Rule 13(q) that is controlled by a resource extraction issuer, then the resource extraction issuer must report it. Again, the entity not required to disclose under Rule 13(q) may be making the payment as an operator or may be making the payment as a member of a joint arrangement."

In joint arrangements, the party operating the arrangement (the "Operator") makes the payment to the government payee and is therefore able to report the payment in the detail required under the Proposed Rules. The non-operating party will not have access to the level of information required to report the payment under the Proposed Rules, nor will they be able to obtain reliable payment information from the Operator, as the non-operator does not have control over the Operator. As a result, the non-operating parties that reimburse the Operator through the relevant joint cost sharing arrangement should not be required to reflect payments made by the Operator in the disclosure of payments under Proposed Rules. The responsibility to include payments for disclosure should be based on the arrangement that exists between the payor and the government payee.

This proposed change of reporting payments made in situations of joint control will: (i) reduce the burden of reporting payments that are not made by issuers and for which the issuer does not have access to payment information; (ii) reduce the risk of double counting payments or uncertainty of the proportion of the payment amount that will be included in each issuers report; and (iii) reduce the risk of inconsistent approaches being taken between different joint ventures and arrangements. Further, as reporting of payments made in situations of joint control are addressed under the EU Directives and ESTMA, this proposed change would achieve greater consistency of payments reported across the respective disclosure regimes.

Definition of "Project" (Question 24)

The definition of "project" under the Proposed Rules should be interpreted to be consistent with the definition of "project" under the EU Directive and ESTMA.

Annual Report Requirement (Questions 35, 36, 37, 38)

The disclosures under the Proposed Rules should be reported on the proposed Form SD and submitted separately from the annual Form 10-K, Form 20-F and Form 40-F. The payment disclosures required by the Proposed Rules differ from disclosures required by such annual reports as financial statement information in such reports is accrual based and audited. Disclosures submitted on Form SD should also not be subject to officer certifications required by Rules 13a–14 and 15d–14 under the Exchange Act. Including the disclosures in Exchange Act annual reports or requiring officer certification would unnecessarily increase the burden and costs on issuers as auditors would be required to increase their scope of review to consider whether the government payment disclosures are materially consistent with the issuer's financial statements and additional internal processes would need to be undertaken by issuers in order to backstop officer certifications. These additional burdens and costs would not result in any incremental benefit to achieving transparency in government payments.

Further, we are supportive of including disclosure on Form SD as it will facilitate the proposed 150 day submission deadline following the issuers most recent fiscal year end. As well, we support the proposed requirement to report payment information based on the fiscal year covered by the annual report, as this will reduce an issuer's compliance costs by allowing them to use their existing processes and reporting systems.

Alternative Reporting (Questions 49, 50, 52, 56)

We believe the SEC should include provisions to allow issuers that are subject to reporting requirements in foreign jurisdictions to submit those alternate reports in satisfaction of the SEC reporting requirements under the Proposed Rules. Foreign jurisdictions aiming to achieve similar disclosures may have differences (some stricter or more flexible), but in substance if the government payment disclosures adopted by foreign jurisdictions achieve a reasonable level of transparency compared to the Proposed Rules. We recommend that a foreign jurisdiction's disclosures be considered "substantially similar" based on evaluation of the following criteria: (i) that payments reported capture those made by the issuer to the government payee in respect of commercial development of oil, natural gas, and minerals; (ii) subsidiaries under the control and consolidated by the issuer are reported; (iii) the payment types captured are reasonably consistent; (iv) the threshold for de minimus payments is reasonable; and (v) minimum disclosures comprise type and total of payments are disclosed for each project and each government, the country the government is located, and the currency used to make such payments. The SEC could also require issuers that provide disclosures under an alternate reporting regime to disclose significant differences between the alternative reporting regime and Rule 13(q).

We believe the SEC should make a determination regarding the similarity of enacted foreign jurisdictional reporting requirements when the final rule is adopted. Moreover, we believe the SEC should work to ensure the final rules are issued in a form that closely aligns or is substantially similar with enacted payment disclosure rules under the EU Directives and ESTMA, as multiple compliance frameworks will unnecessarily increase costs for issuers with little incremental benefit in achieving greater transparency.

Exhibits and Interactive Data Format Requirements (Questions 62, 64, 66)

We believe clarification is needed with respect to how the particular resource tag that is the subject to commercial development should be applied: for example, should a particular resource tag be assigned to each project or assigned to each government payee. Further, the Proposed Rules do not define the particular resource tags: for example, (i) by primary resource targeted such as oil, natural gas, or natural gas liquids, or (ii) by more specific resource product types such as coal bed methane, natural gas liquids, bitumen, heavy oil, light crude oil and natural gas excluding natural gas liquids. Moreover, reporting payments at a particular resource level may pose challenges for some issuers as development projects often target more than one resource as the subject of development. Likewise, not all payments to a government payee are determined or dependent on a particular resource (i.e. property taxes).

If the final rule requires the particular resource to be disclosed, we recommend the SEC provide further clarification of the particular resource categories to be disclosed and that the particular resource tag be made in association with the commercial development 'of the project'. We believe this would reduce confusion and inconsistency in the application of the particular resource tag by issuers.

Moreover, the EU Directives and ESTMA do not require disclosure of the particular resource tag subject to commercial development. While an inconsistency would be created between the Proposed Rules and the aforementioned disclosure regimes, we do not believe this should prevent an issuer's alternate disclosures from meeting 'substantially similar' under *Alternate Reporting* in *Item 2.01*. We believe the primary purpose of the regulation is to disclose payments made to a government payee and do not believe the proposed requirement to disclose the particular resource tag achieves any more incremental transparency or benefit to a user.

Treatment for Purposes of Securities Act and Exchange Act (Questions 67, 68)

We recommend that the disclosures under the Proposed Rules reported on Form SD be furnished rather than filed with the SEC. We believe that requiring such information to be filed may indirectly increase compliance costs, particularly if such information is subsequently incorporated by reference into a registration statement. We do not believe that the level of liability borne by officers and directors of an issuer is reasonable given the purpose of the disclosure. Likewise, as discussed previously, we do not believe that Form SD should require officer certification.

Effective Date (Questions 69)

We recommend an effective date of the proposed disclosures under the Proposed Rules beginning with a fiscal year ending no earlier than one year after the effective date of December 31, 2016. This would provide issuers with a full year for transition and a full fiscal period of payment disclosures.