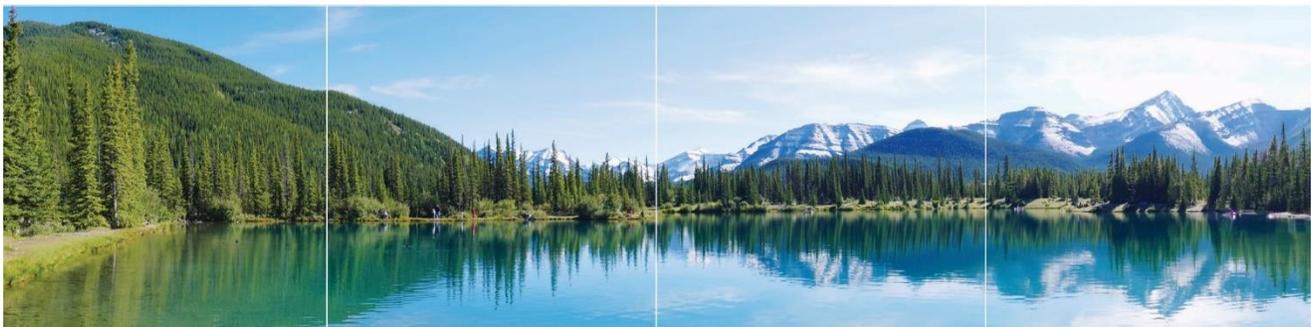




Governance of the Canada Energy Regulator Mandate, Roles and Responsibilities

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1.0 Introduction

This document is a governance tool that provides guidance to Directors, Commissioners, the Chief Executive Officer (CEO), and staff of the Canada Energy Regulator (CER) regarding their roles and responsibilities in supporting the effective delivery of the CER's mandate. It is also intended to serve as a summary and guide for members of the public regarding the governance structure of the CER.¹

The document will be posted on the CER public website and otherwise made available to members of the public on request. This document will be reviewed no less than annually by the Board and updated as may be required.

Wherever the terms "Regulator" or "CER" are used in this document, it refers to the CER in its entirety, including the Board, Commission, CEO, and staff.

This document must be understood in the broader context of the legal framework applicable to the CER, as well as the CER's role within the Government of Canada, of which it is part. This document is not intended to and does not interfere with the CER's exercise of its legislated mandate, including the independence of the Commission when acting in its adjudicative capacity.

2.0 Mandate

2.1 Legislative Mandate

The CER is a departmental corporation and agent of the Crown established under the CER Act. Other statutes pursuant to which the CER exercises powers or functions, or that otherwise apply to the CER include but are not limited to the:

- *Canada Oil and Gas Operations Act*
- *Canada Petroleum Resources Act*
- *Impact Assessment Act*
- *Access to Information Act*
- *Privacy Act*
- *Canada Labour Code*
- *Financial Administration Act*

The CER's overarching legislated mandate is found in section 11 of the CER Act:

The Regulator's mandate includes:

- (a) making transparent decisions, orders and recommendations with respect to pipelines, power lines, offshore renewable energy projects and abandoned pipelines;*
- (b) overseeing the construction, operation and abandonment of pipelines, interprovincial power lines and international power lines and overseeing work and activities authorized under Part 5 as well as abandoned facilities;*
- (c) making orders with respect to traffic, tolls and tariffs and overseeing matters relating to traffic, tolls and tariffs;*
- (d) making decisions and orders and giving directions under Part 8 with respect to oil and gas interests, production and conservation;*
- (e) advising and reporting on energy matters;*
- (f) providing alternative dispute resolution processes;*

¹ A CER governance diagram is attached at Appendix 1.

- (g) exercising powers and performing duties and functions that are conferred on the Regulator under any other Act of Parliament; and*
- (h) exercising its powers and performing its duties and functions in a manner that respects the Government of Canada's commitments with respect to the rights of the Indigenous peoples of Canada.*

The CER's mandate should be understood in the broader context of the CER Act's preamble, and its purpose as set out in section 6:

6. The purpose of this Act is to regulate certain energy matters within Parliament's jurisdiction and, in particular,

- (a) to ensure that pipelines and power lines as well as facilities, equipment or systems related to offshore renewable energy projects, are constructed, operated and abandoned in a manner that is safe, secure and efficient and that protects people, property and the environment;*
- (b) to ensure that the exploration for and exploitation of oil and gas, as defined in section 2 of the Canada Oil and Gas Operations Act, is carried out in a manner that is safe and secure and that protects people, property and the environment;*
- (c) to regulate trade in energy products; and*
- (d) to ensure that regulatory hearings and decision-making processes related to those energy matters are fair, inclusive, transparent and efficient.*

Where a 'designated project'² contains activities regulated under the CER Act, an integrated impact assessment between the Impact Assessment Agency of Canada and the CER is required, which involves coordination and collaboration between the two organizations. The impact assessment meets the requirements of both the *Impact Assessment Act* (IA Act) and the CER Act. It is undertaken by a review panel, at least one member of which is appointed by the Agency from a roster of CER Commissioners, on the recommendation of the Lead Commissioner. The Lead Commissioner is consulted by the Minister of Environment and Climate Change on the review panel's terms of reference.

The CER's mandate should also be understood in the context of the CER's Departmental Results Framework, including its Core Responsibilities of Energy Adjudication, Safety and Environment Oversight, Energy Information, and Engagement, as well as the CER's organizational values, as reflected in the *Code of Conduct for CER Employees* and the *Values and Ethics Code for the Public Sector*.

The general powers, duties and functions of the Commission (which is part of the CER) as an adjudicator and court of record, together with the scope of its jurisdiction, are set out in sections 31 through 36 of the CER Act.

2.2 Government of Canada Policy

The CER is subject to broader Government of Canada policy, as applicable and respecting the Commission's independent adjudicative authority. This includes policies and management requirements of the Treasury Board. The CER regularly works with other government departments and agencies in the interest of policy development and delivery of its legislated mandate.

The Governor in Council and the Minister, as applicable, may provide policy guidance and direction to the CER on matters of general application in a variety of ways, including but not limited to regulation, directions of general application on broad policy matters section 13 of the CER Act, other written policies of general application, and correspondence. For example, communications may pertain to matters such

² The *Physical Activities Regulations*, made under the *Impact Assessment Act*, establish the criteria for which projects are 'designated', meaning that they require an impact assessment.

as the applicability of government priorities or policies to the CER, or the establishment as appropriate of objectives for the CER.

The CER also has a specific mandate under sections 80 through 84 of the CER Act to provide policy advice and recommendations to the Minister, both at the Minister's request (mandatory) and at its own initiative (discretionary). Further, the CER may, on request, provide advice to another federal, provincial or territorial department or agency (s.84). In support of this aspect of its mandate, the CER is required to maintain a broadly-based study and review of matters relating to the energy sector in Canada and abroad as well as the safety and security of regulated facilities. CER officials supporting the advisory mandate bear in mind the requirement to make use of data and information from Government of Canada sources whenever possible (s.86), as well as the confidentiality of advice to the Minister, which may not be published without the Minister's prior approval (s.83(2)).

3.0 Roles and Responsibilities

3.1 The CER within the Government of Canada

The CER is part of the Government of Canada, and its employees are part of the federal public service. As a Board-governed departmental corporation it operates with a level of day-to-day independence from the Minister. However, the CER is ultimately accountable to the Minister of Natural Resources and supports the Minister's accountability to the Prime Minister and to Parliament for the CER's overall performance.

A distinctive responsibility of the CER is the adjudicative role exercised by the Commission, which is intended to ensure the independence of individual decisions. The assurance of this independence is central to the CER's mandate.

The CER is part of a ministerial portfolio. In practice, most of the CER's routine dealings with government are conducted through the Deputy Minister and other departmental officials. The CER's role within the broader government framework is guided by the principles set out in *Open and Accountable Government: A Guide for Ministers*.

3.2 Minister of Natural Resources

The Minister responsible for the CER is the Minister of Natural Resources. The Minister is the principal locus of government authority with respect to the CER but does not engage in the routine work of the CER, which is under the governance of the Board and the day-to-day management of the CEO.

However, the Minister has residual authorities with respect to the CER, either directly or through recommendations to the Governor in Council, on matters such as appointments, time limit extensions and directives to ensure timeliness of recommendation reports, approval of certain regulations, entry into agreements with Indigenous governance bodies under section 77 of the CER Act, and energy policy of general application.

The Minister is accountable to the Prime Minister and to Parliament for the overall effectiveness of the CER in delivering on its mandate, and accordingly has responsibility and authority for communicating broader government policy and priorities to the CER in a manner consistent with its statutory independence.

In practice, ministerial responsibilities for portfolio organizations are largely exercised through officials from the Minister's office and department. The Minister may exercise substantial discretion regarding the extent of personal engagement with the CER, and also regarding the role of the portfolio deputy, but

in all cases communication with the senior leadership of the CER, specifically the Chairperson of the Board and the CEO, is important. The Minister consults with the Board on the appointment of the CEO.

The Minister receives the annual reports of the Regulator (submitted by the Board) and of the Commission and introduces these reports in the House of Commons and the Senate within 15 sitting days (of the respective chambers) of receipt.

The Minister is accountable to the Prime Minister and Parliament to ensure that the CER discharges its statutory powers, duties and functions in a manner that fulfils its mandate and is consistent as appropriate with government policy. The Minister's accountability to Parliament for the CER includes, in addition to submission of reports as required by statute, responding to questions raised in Parliament (e.g., in Question Period or through parliamentary returns) and appearing before committees as required. The CER supports these responsibilities of the Minister.

3.3 Deputy Minister

The Deputy Minister of Natural Resources is a key link between the CER and the Minister. The Deputy Minister works with the Chairperson and CEO, as appropriate, respecting the development and implementation of, for example, applicable policies; CER business planning and reporting; and budget and resource-related matters. The Deputy Minister may play an active role in any general portfolio coordination initiatives under the direction of the Minister.

In practice, much of the senior level communication between the CER and the government takes place between the CEO and Deputy Minister level counterparts at other departments and agencies, including Natural Resources Canada, Environment and Climate Change Canada and the Impact Assessment Agency of Canada.

3.4 Board of Directors and Chairperson

3.4.1 Board of Directors

The CER's Board is comprised of between five and nine directors, including the Chairperson and Vice-Chairperson of the Board. At least one of the directors is required to be an Indigenous person. All members of the Board are appointed by the Governor in Council to serve part-time, at pleasure, for a term of up to five years, with the possibility of renewal for additional terms of up to five years. No one serving as a Commissioner, CER employee or the CEO may be appointed as a Director. In discharging their responsibilities, Directors must act in the best interests of the CER and without conflict of interest. The Board makes decisions and exercises its authorities collectively, and by consensus where possible.

Under the CER Act, the Board is responsible for the governance of the entire Regulator, and its governance functions include providing strategic direction and advice to the CER. As part of this role, the Board approves Regulator reports to Parliament, including the Annual Report of the Regulator. In governing the Regulator, the Board must not give directions or provide advice with respect to any particular decision, order or recommendation that is made by the Commission or a Commissioner.

Accordingly, the Board oversees the CER at the level of governance and strategic advice and direction, and is focused on results and outcomes. It does not normally engage in routine operations, which are the purview of the CEO, and it operates at a high, directional level in matters of management and staff.

However, the Board, under the leadership of the Chairperson, is ultimately accountable to the Minister for ensuring that the CER delivers effectively on its mandate and is appropriately aligned with government policy. In meeting this accountability, the Board:

- Ensures sound governance and high ethical standards and accountability throughout the CER;
- Provides that appropriate systems and practices are in place to ensure the CER is well managed;
- Provides strategic advice and direction on, for example:
 - CER alignment with Government of Canada policy as applicable;
 - CER performance management, risk management and financial management;
 - Succession planning for Directors and senior management;
 - Opening and closing of CER offices outside of Calgary; and
 - CER regulations and overarching policies of broad application to the entire Regulator.
- Submits an annual report on the Regulator's activities to the Minister, and may submit other reports on the Regulator's activities if it considers it appropriate to do so.

The Board works closely with the CEO, who provides the Board with the information needed to discharge its responsibilities. The Board does not appoint the CEO, however it is consulted by the Minister on the CEO's appointment. The Board also contributes to the assessment of the CEO's performance.

The Board may make bylaws respecting the conduct of its meetings and the general conduct of its activities. The Board may conduct the majority of its work through standing or ad hoc committees.

3.4.2 Chairperson and Vice-Chairperson

The Chairperson and Vice-Chairperson of the Board are appointed by the Governor in Council to serve part-time, at pleasure, for a term of up to five years. The Chairperson presides over meetings of the Board, and performs duties or functions that are assigned to him or her by the Board. The Vice-Chairperson acts as Chairperson in the event that the Chairperson is absent, unable to act, or if there is a vacancy in that office.

The Chairperson leads the Board to ensure effective delivery of the Board's legislated mandate and responsibilities. The Chairperson:

- Ensures the Board fulfills its legislated mandate and responsibilities in a transparent manner;
- Oversees the application of sound governance practices;
- Presides over Board meetings;
- Acts as the main point of contact between the Board and the CEO between Board meetings;
- Represents the Board and appears on its behalf at official functions and engagement events, and has prime responsibility for interaction, on behalf of the Board, with the Minister, Lead Commissioner, CEO, Regulator officials, and external officials, parties or bodies, having regard to the Board's mandate;
- As a governance tool, works actively with the CEO and Lead Commissioner to develop appropriate and effective mechanisms of communication, consultation and alignment such as regular trilateral meetings;
- Works with the CEO to develop appropriate and effective mechanisms of communication with the Minister and Deputy Minister;
- After consultation with the Board, nominates Directors to serve as Chairperson and members of each Board Committee;
- Is an ex-officio, non-voting member of all Board Committees;
- Maintains a competency matrix for the Board and leads the Board in succession planning for Directors;
- Leads an annual performance evaluation process for the Board and the CEO;
- Ensures that new Directors receive effective orientation and ongoing training opportunities; and,
- Performs all other duties and functions as may be assigned by the Board.

3.5 Chief Executive Officer

The CEO is appointed by the Governor in Council on the recommendation of the Minister following consultation with the Board. The CEO serves full-time, at pleasure for a term of up to six years, and may be reappointed but may serve a maximum of 10 years in total.

The CEO is responsible for the management of the CER's day-to-day business and affairs, including the supervision of its employees and their work, and has all the responsibilities of a deputy head. However, he or she does not give directions with respect to any particular decision, order or recommendation that is made by the Commission or a commissioner. The CEO works closely with the Board and provides the Board with the support needed to carry out its responsibilities.

As a Governor in Council appointee and deputy head of a departmental corporation, the CEO has multiple accountabilities – to the Board, the Minister, and other bodies such as the Treasury Board and the Public Service Commission. As the Accounting Officer for the CER under the *Financial Administration Act*, the CEO is responsible to appear before committees of the House of Commons and Senate regarding his or her stewardship of the CER.

The CEO leads the external engagement activities of the CER and also serves as the authoritative CER spokesperson, although the Chairperson and other Directors may also have responsibilities in these areas as circumstances warrant. The CEO's day-to-day responsibility for the CER also means that he or she conducts most of the ongoing engagement with the Minister and Deputy Minister.

The CEO is responsible for providing the support services and the facilities that are needed by the Commission to exercise its powers and perform its duties and functions in accordance with the rules that apply to its work. This support is provided in such a way as to ensure the independence of the Commission's adjudicative role.

3.6 Commission and Lead Commissioner

3.6.1 Commission

The Commission is comprised of up to seven full-time Commissioners, including the Lead Commissioner and Deputy Lead Commissioner, who are appointed by the Governor in Council, and hold office on good behaviour for renewable terms of up to six years (for a maximum total service of 10 years). The Commission may also include a complement of part-time Commissioners. At least one full-time Commissioner must be an Indigenous person. Generally, three members of the Commission constitutes a quorum.

The Commission makes regulatory decisions as set out in the CER Act and other legislation. In its adjudicative role, it ensures adherence to the purpose and provisions of the CER Act, s. 35 of the *Constitution Act, 1982*, Part III of the *Official Languages Act*, the rules of natural justice, and other applicable legislation and binding policy direction.

The Commission makes adjudicative decisions and recommendations independently. The Commission's independence is a key element of the CER's mandate. Pursuant to the CER Act, the Board of the CER is not permitted to give directions or provide advice with respect to any particular decision, order or recommendation of the Commission. On these matters, the CEO may provide advice, but not direction.

The Commission is part of the CER and, although its adjudicative role is independent, it contributes to the overall effective delivery of the CER's mandate and Departmental Results Framework, in particular

the CER's Core Responsibilities of Energy Adjudication and Safety and Environment Oversight. The Commission is responsible for ensuring continuous improvement and effectiveness in the areas in which it works.

The Commission is a court of record. Among its responsibilities and authorities, it may adjudicate (including on its own initiative) on any matter where a person has done or failed to do anything required by the CER Act, and may also inquire into any accident involving a pipeline or other CER-regulated facility. The Commission has the power to make orders and prohibitions for the enforcement of its decisions.

The Commission may make rules for carrying out its work and managing its internal affairs vis-à-vis adjudication, including rules respecting the powers, duties and functions of Commissioners, its procedures and practices, its sittings and its decisions, orders and recommendations.

The Commission must submit an Annual Report on its activities to the Minister. The Commission may also submit other reports on its activities to the Minister if it considers it appropriate to do so.

3.6.2 Lead Commissioner and Deputy Lead Commissioner

The Lead Commissioner is responsible for the business and affairs of the Commission. For integrated impact assessments between the Impact Assessment Agency and the CER, the Lead Commissioner is consulted by the Minister of Environment and Climate Change on the review panel's terms of reference. At least one member of the review panel is appointed by the Agency from a roster of CER Commissioners, on the recommendation of the Lead Commissioner.

The Deputy Lead Commissioner acts as the Lead Commissioner in the event that the Lead Commissioner is absent, unable to act, or if there is a vacancy in that office.

The Lead Commissioner leads the Commission to ensure effective delivery of the Commission's legislated mandate and responsibilities. The Lead Commissioner:

- Ensures the Commission fulfills its legislated mandate and responsibilities in a transparent manner;
- Apportions the Commission's work among the Commissioners and establishes panels of at least three Commissioners to exercise the powers of the Commission;
- Works with the CEO to ensure that the Commission has the resources necessary to discharge its responsibilities in a manner that ensures the independence of the Commission's adjudicative role;
- Presides over meetings of the full Commission;
- Acts as the main point of contact between the Commission and the CEO and Board;
- Represents the Commission and appears on its behalf at official functions;
- Works actively with the CEO and Chairperson to develop appropriate and effective mechanisms of communication, consultation and alignment, such as through regular trilateral meetings;
- Maintains a competency matrix for the Commission, which may be used to inform succession planning for Commissioners; and,
- Ensures that new Commissioners receive effective orientation and ongoing training opportunities.

3.6.3 Designated Officers

Pursuant to section 54 of the CER Act, the Governor in Council may make regulations that specify powers, duties and functions of the Commission that are technical or administrative in nature and may be exercised or performed by designated officers. The circumstances under which designated officers may exercise such responsibilities, and the procedures and processes applicable to their exercise are also set out in regulation. The CEO is responsible for apportioning work among the designated officers,

who are employees of the CER.

3.7 Indigenous Advisory Committee

The preamble to 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. The CER exercises its powers and performs its duties in a manner that respects and furthers this commitment.

Consistent with the above commitment, section 57 of the CER Act provides that the CER must establish an advisory committee (Indigenous Advisory Committee) for the purpose of enhancing the involvement of the Indigenous peoples of Canada and Indigenous organizations in respect of CER-regulated facilities. Membership of the Indigenous Advisory Committee must include at least one person recommended by each of an Indigenous organization that represents the interests of First Nations, an Indigenous organization that represents the interests of the Inuit, and an Indigenous organization that represents the interests of the Métis.

The Indigenous Advisory Committee is part of the CER's governance structure and will play a key role in enhancing the CER's performance and effective delivery of its mandate. The Board will, on behalf of the CER, oversee the establishment of the Indigenous Advisory Committee and endorse its Terms of Reference. Once established, the Indigenous Advisory Committee will liaise directly with and provide its advice to the Board for the benefit of the entire CER.

4.0 Internal CER Communications

The roles and responsibilities of the Board, CEO and Commission are distinct, and independence in carrying out those roles must be respected. However, it is essential that the Chairperson (on behalf of the Board), the CEO, and the Lead Commissioner (on behalf of the Commission) communicate and collaborate with one another on matters of shared interest and impact to the entire CER. Such communication and collaboration fosters internal CER cohesiveness and a shared sense of purpose, while respecting the Commission's adjudicative independence.

In practice, most communication and collaboration occurs bilaterally between the CEO and Lead Commissioner; and between the CEO and Chairperson. Less frequently, the Lead Commissioner and Chairperson may communicate directly, through correspondence and reports, bilateral meetings, trilateral meetings with the CEO, or attendance by the Lead Commissioner at Board meetings.

Examples of areas that may require communication and collaboration amongst the Chairperson, CEO and Lead Commissioner include:

- Continual improvement in CER processes, including through incorporation of learnings, engagement feedback, and best practices;
- Building meaningful relationships with Indigenous peoples and stakeholders over the full lifecycle of CER-regulated infrastructure;
- CER regulations and overarching policies of broad application;
- Identifying and addressing systemic issues within the regulated industry to prevent harm;
- Effective management of urgent issues or emergencies within the CER or with respect to CER-regulated infrastructure;
- Communication and transparency of CER activities and decisions;
- Efficient and effective use of human and financial resources in support of all CER activities; and,

- CER alignment with government policies of broad application, including binding policy direction issued under section 13 of the CER Act.

5.0 Conduct Standards

The CER expects all of its senior officials and staff members to adhere to the highest standards of ethical conduct for the public sector.

5.1 Governor in Council Appointees

As Governor in Council appointees, Directors (including the Chairperson and Vice-Chairperson), the CEO, and Commissioners (including the Lead Commissioner and Deputy Lead Commissioner) are subject to statutory conduct standards as well as other conduct standards that are terms and conditions of appointment. These include the *Conflict of Interest Act* and the relevant annexes of *Open and Accountable Government*, such as those pertaining to ethical guidelines and political activity guidelines for public office holders. Sections 16, 22 and 29 of the CER Act specify certain circumstances that constitute a conflict of interest for purposes of the *Conflict of Interest Act* for Directors, the CEO and Commissioners respectively.

5.2 Conduct Standards for CER Employees

CER employees are subject to the behavioral standards applicable to the federal public administration, including the *Public Service Disclosure Protection Act* (PSDPA), and the *Values and Ethics Code for the Public Sector* established by the Treasury Board pursuant to that Act. These instruments set out conduct standards (both principles and expected behaviours) and provide mechanisms for seeking remedies or redress for wrongdoing.

As required by the PSDPA, the CER has its own *Code of Conduct for CER Employees* which incorporates the *Values and Ethics Code for the Public Sector* in a way that is reflective of the CER's unique mandate. The conduct of CER employees must align with the values of Respect for Democracy, Respect for People, Integrity, Stewardship and Excellence, and the guiding principles of the Prevention of Harm and Adjudicative Independence.

Public servants should respect the elements of *Open and Accountable Government*. Conventions and practices of Canada's system of government pertaining to the independence of administrative tribunals, which are set out in *Open and Accountable Government*, have distinctive relevance to the CER.

Finally, public servants are subject to the political neutrality provisions of the *Public Service Employment Act*, which is administered by the Public Service Commission of Canada.

Appendix 1: CER Governance Diagram

The following diagram depicts governance of the CER, which is the accountability of the Board of Directors. It demonstrates CEO and staff support provided to the Commission and the corporate management system. The Board of Directors provides the strategic direction to the whole of the organization as well as a governance connection to the Minister. The Board also receives advice, on behalf of the CER, from the Indigenous Advisory Committee.

The Governance diagram does not represent reporting or functional relationships. This diagram does support a shared understanding of how each area works with, and relies upon the others, to achieve organizational outcomes.

