



Canada Energy Regulator
Suite 210, 517 10th Avenue SW
Calgary, AB T2R 0A8

January 31, 2022

To Whom It May Concern,

Plains Midstream Canada is pleased to provide comments on the Canadian Energy Regulator's (CER) Proposed Filing Manual Updates (December 2021). Over the 60-day public comment period announced by the CER, Plains has fully engaged all relevant internal stakeholders to review the updated regulatory processes that will impact the company and its assets.

Plains appreciates the effort made by the CER to align various sections of its Filing Manuals to reflect changing requirements, conditions, regulations, industry practices, and feedback received from regulated companies, Indigenous peoples and other interested persons or groups.

Plains provides the following comments on the Proposed Filing Manual Updates:

- Plains supports the proposed updates to Guide O (Variances and Project Updates)
- As noted in the Public Feedback Opportunities on Proposed Filing Manual Updates, Plains has provided comments and suggested edits directly on draft document s. 1.5 (Confidential Filing)
 - The CER Act sets out requirements or the test to be met for a confidentiality order, whereas the Rules are more process oriented (i.e. the Rules do not establish the test)
 - Please see attached Filing Manual Update – s. 1.5 Confidential Filing (Jan 2022)
- Plains recommends the CER provide both a general contact to submit questions related to a filing, as well as a publication of an FAQ to answer common questions that the industry has addressed.
- Plains stakeholders would like to ensure that as part of any future CER filings that all confidential information is not made publicly available

Plains supports the development, review, and update of compliance requirements, as well as service standards or other guidance regarding the CER's Filing Manual Updates. Properly designed, documents such as these enhance federal regulatory process clarity, predictability, and timing certainty. Please consider the comments and suggestions raised by Plains and its various stakeholders when undergoing the final review of the updated sections.

Yours sincerely,

Sarah Rimbey
Analyst, Regulatory Affairs
Plains Midstream Canada

Filing Manual Update – s. 1.5 Confidential Filing

Existing s. 1.5 Confidential Filing	Proposed new s. 1.5 Confidential Filing	CER Commentary for modification	Comments
	<p><u>The CER is committed to transparency and accountability. As an administrative tribunal, the Commission holds hearings that are open to the public and makes its court record available for public viewing. However, some filings may need to be made confidentially for any of the reasons indicated in sections 60 or 61 of the CER Act. As confidentiality is an exception to the fundamental principle that proceedings are open to the public, the onus is on the applicant to show why such an extraordinary remedy should be granted to keep information in a public proceeding confidential.</u></p> <p><u>Filings may also be made outside of hearings or other proceedings, which may be made available to the public as part of the commitment to transparency. Where a filing is unrelated to a proceeding and is not subject to sections 60 or 61 of the CER Act, a request can also be made of the CER not to make the filing public.</u></p> <p><u>The CER will protect the confidentiality of Indigenous knowledge if provided in confidence pursuant to section 58 of the CER Act. Confidential Indigenous knowledge does not need to meet the requirements described here. In situations where such knowledge is being shared, the CER will discuss the process and requirements with the party who is sharing that information.</u></p> <p><u>Please note that all filings, regardless of whether they are confidential or not, are nevertheless subject to the <i>Access to Information Act</i> and <i>Privacy Act</i>.</u></p>	<p>Proposed updates</p> <p>Filing Manual section 1.5 and Electricity Filing Manual section 1.4 require updating because:</p> <ul style="list-style-type: none"> • requests for confidential treatment of filings often do not include sufficient justification to make a decision, so additional IRs are often required; • the legislation refers to a "proceeding" which is not defined in the CER Act. Confusion can result in relation to what type of application is appropriate for condition compliance and lifecycle regulation (which may not be "proceedings"); and • sections 58-62 of the CER Act have changed from the previous NEB Act, including the addition of confidentiality for Indigenous knowledge. <p>The following proposed updates will improve clarity around the filing requirements and guidance for confidential filings:</p> <p>[...]</p> <ul style="list-style-type: none"> • note that Indigenous knowledge must be treated differently than, for example, commercial confidentiality. <p>Benefits will include improved clarity of filing requirements. This should reduce the need for information requests because applicants will be able to more fully justify requests for confidentiality.</p>	<p>1. Suggest rewording the introduction to align with the CER Act requirements</p> <p>Sections 60 and 61 of the Act include legislated requirements for meeting a request for confidentiality and do not indicate that the granting of a confidentiality order is "extraordinary." Suggest removal of the indication that granting a confidentiality order is considered an "extraordinary" remedy and that the introduction be reworded as follows:</p> <p><i>The CER is committed to transparency and accountability. As an administrative tribunal, the Commission holds hearings that are open to the public and makes its court record available for public viewing. However, some filings may need to be made confidentially for any of the reasons indicated in sections 60 or 61 of the CER Act. As confidentiality is an exception to the fundamental principle that proceedings are open to the public, the onus is on the applicant to show <u>how the requirements of sections 60 and 61 of the CER Act are met in any given case. why such an extraordinary remedy should be granted to keep information in a public proceeding confidential.</u></i></p>

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<p>Applicants for all requests made pursuant to s. 60 or s. 61 of the CER Act must provide:</p> <ol style="list-style-type: none"> 1. A cover letter containing the request and reasons for the requests, as well as a summary of the nature of the information to be treated confidentially; 2. If possible, a redacted version of the filing (which does not contain the information requested to be kept confidential); and 3. One unredacted copy of the filing that the applicant requests to be kept confidential. The filing must be provided via hand delivery, ordinary mail, registered mail or courier to the Secretary of the Commission in a double sealed envelope under confidential cover. 	<p><u>1.5.1 Filing Requirements</u></p> <p><u>Applicants for all requests to treat filings confidentially, whether in a proceeding or otherwise, must have sufficient detail and provide:</u></p> <ol style="list-style-type: none"> 1. <u>A cover letter containing:</u> <ol style="list-style-type: none"> a. <u>the request and reasons for the request;</u> b. <u>a summary of the nature of the information to be treated confidentially; and</u> c. <u>a detailed description of why the filing requires confidential treatment.</u> 2. <u>If possible, a redacted version of the filing that can be made public (with redactions to the information requested to be kept confidential).</u> 3. <u>One unredacted copy of the filing that the applicant requests to be kept confidential. The filing must be provided via hand delivery, ordinary mail, registered mail or courier to the Secretary of the Commission in a double sealed envelope under confidential cover.</u> 		<p>2. Suggest the CER consider</p> <ol style="list-style-type: none"> a. the acceptance of confidential documents in electronic format (such as secure file sharing or password protected electronic copies); and b. introduction of e-filing processes to facilitate confidentiality requests, instead of the requirement for "hand delivery, ordinary mail, registered mail or courier" to include e-filing allowance <p>The proposed revision to the filing manual continues to require "hand delivery" or delivery by "ordinary mail, registered mail or courier" of documents containing information that are sought to be kept confidential. Plains Midstream Canada ULC ("Plains") suggests the CER investigate the introduction of electronic submission of such documents.</p> <p>First, Plains suggests that the provision of such documents by electronic means (such as password protected copies of via secure file sharing platforms) should be included in the Filing Manual.</p> <p>Second, in today's business environment electronic filing has become the norm, due largely to convenience, few or limited concerns with accessibility, and as a method for increasing the efficiency of proceedings. Plains believes the CER should investigate augmentation of its e-filing systems to receiving documents electronically to which a request for confidentiality has been made.</p>

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			The model employed by the Alberta Utilities Commission ("AUC") is such an example. The AUC's e-filing system allows confidential documents to be uploaded directly to the AUC's e-filing website, with access being regulated on website itself. A dedicated inbox for parties seeking confidential treatment of a document, or an allowance for CER administrators to designate a proceeding or order specific inbox for confidentiality filings would be easily navigable by affected parties and provide the benefits of convenience and efficiency.
<p>SS. 60 and 61 of the CER Act</p> <p>In respect of a filing related to:</p> <ul style="list-style-type: none"> Any regulatory proceeding (i.e., applications filed under the CER Act or any other public hearing process under the CER Act); Matters related to condition compliance where the condition is a "for approval" condition of the Commission; or Any other matter where there is significant third party interest; <p>an applicant may request that the CER treat that filing as confidential, in accordance with s. 60 of the CER Act. In order for such a request to be successful, the Commission must be satisfied that the filing meets the conditions set out in s. 60 of the CER Act.</p> <p>Where a request to treat filing as confidential is due to a potential risk to the security of a facility, applicants may apply under s. 61 of the CER Act. In order for such a request to be successful, the Commission must be</p>	<p>Guidance</p> <p><i>Sections 60 and 61 of the CER Act</i></p> <p>In Sections 60 and 61 of the CER Act allow for certain filings to be treated confidentially and protected from disclosure during a proceeding. These sections will generally apply in respect of a filing related to:</p> <ul style="list-style-type: none"> Any regulatory proceeding (i.e., applications filed under the CER Act or any other public hearing process under the CER Act); Matters related to condition compliance where the condition is a "for approval" condition of the Commission; or and Any other matter where there is significant third party interest; an applicant may <u>In the case of section 61, information that is contained in any order under the CER Act.</u> <p><u>For number 1(c) above, the detailed description must indicate under which section or subsection of the CER Act confidentiality is being requested. Given the</u></p>	<p>The following proposed updates will improve clarity around the filing requirements and guidance for confidential filings:</p> <ul style="list-style-type: none"> add more specific filing requirements, based on Commission rulings that explain the key factors; distinguish between requirements for filings during and outside of a "proceeding", and those relating to Indigenous knowledge; <p>[...]</p>	No comments.

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<p>satisfied that the filing meets the conditions set out in s. 61, and that the filing was made:</p> <ul style="list-style-type: none"> • in respect of any order of the Commission made under the CER Act; • in any regulatory proceeding (i.e., applications filed under the CER Act or any other public hearing process under the CER Act); • in respect of a matter relating to condition compliance where the condition is a "for approval" condition of the Commission; or • any other matter where there is significant third party interest. 	<p>importance of maintaining open, accessible and transparent proceedings, any request that the CER treat for confidentiality should be as narrow as possible.</p> <p>The detailed description must also clearly describe how the requirements of that filing as confidential, in accordance with s. section or subsection are met based on the language in the CER Act:</p> <p>In order for such a request to be successful, the Commission must be satisfied that the filing meets the conditions set out in s. 60 of the CER Act.</p> <p>Where a request to treat filing as confidential is due to a potential risk to the security of a facility, applicants may apply under s. 61 of the CER Act. In order for such a request to be successful, the Commission must be satisfied that the filing meets the conditions set out in s. 61, and that the filing was made:</p> <ul style="list-style-type: none"> • in respect of any order of the Commission made under the CER Act; • in any regulatory proceeding (i.e., applications filed under the CER Act or any other public hearing process under the CER Act); • in respect of a matter relating to condition compliance where the condition is a "for approval" condition of the Commission; or • any other matter where there is significant third party interest. <p>Applicants for all requests made pursuant to s. 60 or s. 61 of the CER Act must provide:</p> <ol style="list-style-type: none"> 1. A cover letter containing the request and reasons for the requests, as well as a summary of the nature of the information to be treated confidentially; 		

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	<p>60 The Commission or a designated officer may take any measures and make any order that the Commission or designated officer considers necessary to ensure the confidentiality of any information likely to be disclosed in any proceedings under this Act if the Commission or designated officer is satisfied that</p> <p>(a) <u>disclosure of the information could reasonably be expected to result in a material loss or gain to a person directly affected by the proceedings, or could reasonably be expected to prejudice the person's competitive position;</u></p> <p>(b) <u>the information is financial, commercial, scientific or technical information that is confidential information provided to the Regulator and</u></p> <p style="padding-left: 40px;"><u>(i) the information has been consistently treated as confidential information by a person directly affected by the proceedings, and</u></p> <p style="padding-left: 40px;"><u>(ii) the Commission or designated officer considers that the person's interest in confidentiality outweighs the public interest in disclosure of the proceedings; or</u></p> <p>(c) <u>there is a real and substantial risk that disclosure of the information will compromise the safety and well-being of persons or cause harm to property or the environment.</u></p> <p>61 <u>The Commission or a designated officer may take any measures and make any order that the Commission or designated officer considers necessary to ensure the confidentiality of information that is contained in any order under this Act or that is likely to be disclosed in</u></p>		

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	<p><u>any proceedings under this Act if the Commission or designated officer is satisfied that</u></p> <p>(a) <u>there is a real and substantial risk that disclosure of the information will pose a risk to the security of pipelines, abandoned pipelines, power lines, offshore renewable energy projects, including buildings, structures or systems — including computer or communication systems, or methods employed to protect them — and the need to prevent disclosure of the information outweighs the public interest in disclosure of orders and proceedings; or</u></p> <p>(b) <u>there is a real and substantial risk that disclosure of the information will compromise the safety and well-being of persons or cause harm to property or the environment.</u></p> <p><u>When considering the confidentiality request, the Commission or Designated Officer may establish a comment process to solicit feedback on the request and may post a notice of the request on the CER website to permit comments from the public.</u></p>		
<p>If the Commission is satisfied that the filing meets the conditions set out in ss. 60 or in s. 61 it may take measures that it considers necessary. One such measure is that only select CER staff and Commissioners responsible for the consideration of the filing would have access to the information, and the information would not be available to the public. The Commission</p>	<p>If the Commission <u>or Designated Officer</u> is satisfied that the filing meets the conditions <u>requirements</u> set out in ss. sections 60 or in s. 61, it may take measures that it considers necessary: <u>to ensure the confidentiality of the filing.</u> One such measure is that only select CER staff and, Commissioners <u>or Designated Officers</u> responsible for the consideration of <u>considering</u> the filing would have access to the information, and the information would not be available to the public. The Commission may also issue an order for rulings made pursuant to s. 60 or 61. In some proceedings it may be</p>		<p>3. Requirements for information respecting other party/parties access to confidential information</p> <p>While the revised section 1.5 of the Filing Manual includes reference to circumstances where "it may be necessary...for another party or parties to have access to the confidential filing," there is currently no process under the proposed section 1.5.1 (Filing Requirements) respecting same.</p> <p>Plains suggests adding a requirement to indicate in the cover letter, required under proposed section</p>

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<p>may also issue an order for rulings made pursuant to s. 60 or 61.</p>	<p><u>necessary for fairness reasons for another party or parties to have access to the confidential filing, subject to appropriate undertakings or other protective measures.</u></p> <p><u>If a request for confidentiality is granted the Commission or Designated Officer will provide reasons and issue directions or an order. The confidential information will be protected by the CER.</u></p> <p><u>If the Commission or Designated Officer is not satisfied that the applicant has demonstrated that the filing meets the requirements of section 60 or 61, the document will be returned to the applicant and will not be considered as part of the application. In some instances, the applicant may be encouraged to refile the information on the public record, in order to have complete information for the application.</u></p>		<p>1.5.1 (Filing Requirements), whether the requested confidentiality is intended to apply to all participants in the proceeding (<i>i.e.</i> only the CER may review the confidential information), specific participants in the proceedings (<i>i.e.</i> some parties to the proceeding may review the information), or merely to prevent disclosure of the information to the public at large (<i>i.e.</i> all parties to the proceeding may have access to the information).</p> <p>Plains also suggests that the CER include a standard form of confidentiality undertaking to be executed by third parties seeking access to information that has been granted confidential treatment and the requirement to file a confidentiality protocol that includes the measures that the third party will implement and follow to ensure compliance with the confidentiality undertaking.</p>
<p>Policy on Government Security</p> <p>In respect of filings which are unrelated to:</p> <ul style="list-style-type: none"> regulatory proceedings; matters relating to condition compliance where the condition is a "for approval" condition of the Commission; or any other matter where there is a significant third party interest; <p>such filings may be designated in accordance with the Policy on Government Security. The CER protects sensitive information under its control in accordance with this policy. In order for a filing to be classified in accordance with this standard, it must be considered</p>	<p><u>Other filings</u></p> <p><u>Policy on Government Security</u></p> <p><u>The CER may also decide not to make certain filings public upon request. Such requests can be made for filings that In respect of filings which</u> are unrelated to:</p> <ul style="list-style-type: none"> regulatory proceedings; matters relating to condition compliance where the condition is a "for approval" condition of the Commission; or and <u>information contained in any other matter where there order under the CER Act.</u> <p><u>The CER will consider similar information as section 60 and 61 applications, as well as whether a filing is a</u></p>	<p>The following proposed updates will improve clarity around the filing requirements and guidance for confidential filings:</p> <ul style="list-style-type: none"> add more specific filing requirements, based on Commission rulings that explain the key factors; distinguish between requirements for filings during and outside of a "proceeding", and those relating to Indigenous knowledge; <p>[...]</p>	<p>See above comment #3.</p>

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<p>sensitive. That is, if it was compromised, it could reasonably be expected to cause injury outside the national interests, for example, damage to an individual's reputation. Applicants may wish to provide information which may assist the CER in classifying a filing pursuant to the Policy on Government Security. Further information about the policy, particularly in regards to the levels of designation, can be obtained by viewing the policy online.</p>	<p><u>expected to attract significant third-party interest; in determining whether it should not be made public. As such, requesters are asked to consider the requirements in sections 60 and 61 when providing detailed information explaining why a filing should not be made public.</u></p> <p>such filings may be designated in accordance with the Policy on Government Security. The CER protects sensitive information under its control in accordance with this policy. In order for a filing to be classified in accordance with this standard, it must be considered sensitive. That is, if it was compromised, it could reasonably be expected to cause injury outside the national interests, for example, damage to an individual's reputation. Applicants may wish to provide information which may assist the CER in classifying a filing pursuant to the Policy on Government Security. Further information about the policy, particularly in regards to the levels of designation, can be obtained by viewing the .</p> <p><u>When considering the request, the CER may seek feedback and may post a notice of the request on its website to permit comments from the public.</u></p> <p><u>If the CER is satisfied that the filing should not be made public, it may take measures that it considers necessary to ensure that this is accomplished, subject to specific disclosures as may be appropriate to fulfill the CER's mandate in conjunction with undertakings or other protective measures as necessary.</u></p> <p><u>If the CER is not satisfied that the requester has demonstrated that the filing should be withheld from the public, the document will be returned to the requester and will not be considered. In some instances the requester may be encouraged to refile the</u></p>		

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	<u>information in a manner that would permit disclosure to the public.</u>		
<p>Note: The CER will continue to treat all Emergency Response Manuals in accordance with the Policy on Government Security, even if treatment is not specifically requested. Therefore, no specific information is necessary for the filing of Emergency Response Manuals where such a filing is made in the following circumstances:</p> <ul style="list-style-type: none"> • outside of a regulatory proceeding (and where there is no significant third party interest); or • condition compliance where the condition is not a "for approval" condition of the Commission. <p>Emergency Response Manuals being filed in the course of a regulatory proceeding, or during condition compliance where the condition is a "for approval" condition of the Commission, or during any other matter where there is significant third party interest, must be accompanied by a request that the CER treat a filing as confidential pursuant to s. 60 or 61 of the CER Act.</p> <p>FYI - Order MO-006-2016 Compelling Publication of Emergency Procedures Manuals required under subsection 32(1.1) of the OPR</p> <p>With respect to Emergency Procedures Manuals, applicants are reminded that, subject to redaction and exemption provisions set out in Order MO-006-2016 [Filing A79720], companies are required to publish the entirety of their emergency procedures manuals</p>	<p>Note: The CER will continue to treat all Emergency Response Manuals in accordance with the Policy on Government Security Order MO-006-2016, even if treatment is not specifically requested. Therefore, no specific information <u>that is protected from publication</u> is necessary for the filing of Emergency Response Manuals where such a:</p> <ol style="list-style-type: none"> 1. <u>The omitted information is substituted with a description of the nature of the protected information and a statement explaining why it is protected; and</u> 2. The filing is made in the following circumstances: <ul style="list-style-type: none"> a) outside-Outside of a regulatory proceeding (and where there is no significant third party interest); or b) condition-Condition compliance where the condition is not a "for approval" condition of the Commission. <p>Emergency Response Manuals being filed in the course of a regulatory proceeding, or during condition compliance where the condition is a "for approval" condition of the Commission, or during any other matter where there is significant third party interest, must be accompanied by a request that the CER treat a filing as confidential pursuant to s. 60 or 61 of the CER Act.</p>		No comments.

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<p>applicable to their CER-regulated facilities on their or their affiliate's internet site for public viewing.</p> <p>The CER anticipates that the version of the Emergency Procedures Manual published on a company's website would be sufficient for filing in most regulatory proceedings. Requests from regulatory proceeding participants for a version to be filed other than the version published on a company's website would be considered on an individual basis by the Commission and be subject to the considerations noted above in Section 1.5 Confidential Filing.</p>	<p>FYI—Order MO-006-2016 Compelling Publication of Emergency Procedures Manuals required under subsection 32(1.1) OPR.</p> <p>With respect to Emergency Procedures Manuals, applicants are reminded that, subject to redaction and exemption provisions set out in Order MO-006-2016, companies are required to publish the entirety of their emergency procedures manuals applicable to their CER regulated facilities on their or their affiliate's internet site for public viewing.</p> <p>The CER anticipates that the version of the Emergency Procedures Manual published on a company's website would be sufficient for filing in most regulatory proceedings. Requests from regulatory proceeding participants for a version to be filed other than the version published on a company's website would be considered on an individual basis by the Commission and be subject to the considerations noted above in Section 1.5 Confidential Filing.</p>		