



Filing Manual – Guide O – ~~Review, Rehearing or~~ **Variance Applications** ~~(CER Act ss. 69, 190)~~ and Project Updates

~~An applicant may apply~~The Commission is authorized to review, vary, or rescind any decision or order it issues under section 69 of the CER Act. It also may vary certificates, licences, and permits under sections 190, 280, 288, 300, 348, and 365 of the CER Act. This Guide addresses filing requirements for variance applications, including name changes and project updates.

For changes to the Commission's decision through a review or rehearing, please see Guide N.

Goal

The submission includes sufficient information to describe and support requested changes to the details of a ~~previous Commission decision or order,~~ regulatory instrument.

O.1 Changes to the Name of a Holder of a Certificate, License or Permit

O.1.1 Filing Requirements for transfer of ownership, lease, or amalgamation pursuant to section 181 of the CER Act

See Filing Manual Guide R.

Guidance

~~190A variance to vary a certificate, licence or permit. Part III of the Rules sets out the procedure to or~~order under section 190 of the CER Act is required where the company that owns the pipeline will change, for example, in the event of a sale, purchase, transfer or lease of a pipeline, or amalgamation, for which leave was granted by the Commission under section 181 of the CER Act. Refer to Filing Manual – Guide R – Transfer of Ownership, Lease or Amalgamation (CER Act s. 181).

O.1.2 Filing Requirements for Corporate Name Changes (without a change in ownership, lease, or amalgamation) pursuant to section 181 of the CER Act

Provide the following:

1. State the name change, including all previous known names;

2. A list of all regulatory instruments including orders and certificates that will require changes;
3. An update of all documents associated with Financial Resource Requirements and Abandonment Funding as needed to reflect the name change, including:
 - a. financial instruments used for abandonment funding including as applicable, updated letters of credit, surety bonds, and/or abandonment trusts;
 - b. financial instruments used for demonstration of proof of financial resources; and
4. A map (or maps) detailing all facilities for which the corporate name change applies. (See section 1.12 of the Filing Manual)
- 1.5. These documents should be followed for a review or rehearing submitted by the company's Accountable Officer.

Guidance

Where the company that is authorized under the order or certificate to own the pipeline has not changed (e.g., in the event of a mere corporate name change), the Commission expects companies to notify the Commission and request a change to their order or certificate. At a minimum, and if not done at the time the name is changed by the company, the changes should be noted when filing certain annual compliance information each January, such that the Commission can update certificates and orders accordingly^[1].

In either instance, in the event of variances because of a change in ownership or corporate name, signage on facilities and emergency contact information for landowners must be updated within 30 days of the name change to facilitate communication and safety reporting (see OPR, paragraph 36(f)).

O.2 Variances

Goal

The application must identify the decision, order, certificate, licence or permit affected and must include the grounds for review or rehearing of the decision or order or the reason variation of the certificate, licence or permit is required.

Filing Requirements

Applications for review or rehearing variances must meet the requirements set out in Part III include the following:

¹ See MH-001-2013 Reasons for Decision Set-aside and collection mechanisms May 2014 Pipeline Abandonment – Financial issues, Appendix XV Reporting Form – Companies using Trusts for Set-aside mechanism, Appendix XVI and Appendix XVI Reporting Form – companies using Set-aside mechanisms other than trusts, and Exempt Companies, page 157-8, pdf 175-6.

1. A concise summary of the Rules, which may be summarized as follows: changes the applicant is requesting the CER to assess;
2. The application must be in writing, signed by the applicant or the applicant's authorized representative, filed with the CER and served on all parties to the proceeding that gave rise to the decision or order in respect of which the review or rehearing is sought. All necessary design details of the proposed changes;
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 - ~~The application must contain:~~
 - ~~○ a concise statement of the facts;~~
 - ~~○ the grounds that the applicant considers sufficient~~
 - ~~▪ in the case of a review, no changes to raise a doubt as to the correctness of the decision or order, or~~
 - ~~▪ in the case of a rehearing, to establish the requirement for rehearing, including:~~
 - ~~▪ any error of law or jurisdiction;~~
 - ~~▪ changed circumstances or new facts that have arisen since the close of the original proceeding; or~~
 - ~~▪ facts that were not placed in evidence in the original proceeding and that were then not discoverable by reasonable diligence;~~
- 2.3. the nature of the prejudice or damage that has resulted or the facility economics will result from the decision or order; and variance request, or provide documentation or information to explain any changes to facility economics;
 - ~~○ the nature of the relief sought.~~
4. Where the application is Any supporting documentation or information to explain and support the change; and
5. Any applicable references to the Filing Manual.

Guidance

Companies are expected to file a variance request when making substantive changes to a previously granted authorization or condition.

To vary an existing order, certificate, licence or permit, companies must include the reason the variation variance is required and all information necessary to support the change proposed, including the information required by the relevant Filing Manual Guide(s).=

Guidance

In Part III of the Rules, and in this guidance, a reference to an application for review includes an application to vary or rescind any decision or order of the Commission.

Reviews or Rehearings

There is no automatic right of review or rehearing. In other words, the Commission's power under section 69 of the CER Act is discretionary. In past decisions, the Commission has stated this discretion must be exercised sparingly and with caution.

Section 45 of the Rules establishes a two-step process for review or rehearing applications. The Commission first determines whether the decision or order should be reviewed or the application reheard. In order to find that a review or rehearing is required, the Commission must be satisfied that the applicant has raised a doubt as to the correctness of the decision or order under review or has demonstrated that a rehearing is required. Before making its determination, the Commission may, but is not required to, give interested parties the opportunity to file submissions. If the first test is met, the Commission considers the review or rehearing application on its merits. In doing so, the Commission may establish a process to govern the conduct of the review or rehearing.

An applicant may apply for an order staying the decision or order in respect of which the review is sought pending the review or staying the original proceeding pending the rehearing by meeting the requirements of section 47 of the Rules.

Variance Applications

Applications to vary an order, certificate, licence or permit are generally required to reflect changes to previously approved applications. Such an application may be required to:

- modify facilities previously approved under the CER Act;
- make changes to tolls and tariffs approved under sections 225-240 of the CER Act; or
- make changes to the name of the holder of the certificate, licence or permit.

In each case, the applicant must satisfy the filing requirements of the relevant Filing Manual Guide. For example, an application seeking to vary a certificate of public convenience and necessity to reflect a design change must include all information required under Guide A, and any other relevant guides, to support the proposed change. The applicant must examine CER will issue a formal response, and when applicable, will vary regulatory instruments to reflect the Guide pursuant to which the original instrument was issued to determine specific filing requirements approved changes.

Variation of a Commission decision, certificate, order or permit does not require the approval of the Governor in Council. However, it is possible for the Minister to direct that Governor in Council approval of a variation of a certificate be required under section 190 of the CER Act. Applicants should be aware that, should the Minister so direct, it will extend the timeline for obtaining certificate variations.

A variance to a certificate under section 190 or order requested under section 69 is required where the company that operates the pipeline will change, for example, in the event of a sale, purchase, transfer or lease of a pipeline, or amalgamation, for which leave was granted by the Commission under section 181.

~~Where the company that is authorized under the order or certificate to operate the pipeline has not changed (e.g., in the event of a simple corporate name change), a variance is not required. However, for administrative purposes, the CER strongly encourages companies to notify the CER and request an amendment to their order or certificate in the event of a corporate name change. At a minimum, and if not done earlier, the changes should be noted when filing certain annual compliance information each January.⁴~~

~~Further, in the event of a Companies are expected to clearly explain what the request is. If the variance application includes multiple requests, applicants must clearly explain each request and provide the necessary information to assess each request.~~

~~Unlike many other types of applications, there are no service standards associated with variance filings. Companies are encouraged to plan accordingly and to ensure the variance or corporate name change, signage on facilities application is complete prior to submission.~~

Examples of substantive changes that require a variance application

General

- undertaking project activities in different seasons
- scope, scale and communication with landowners must be updated within 30 days/or nature of activities have changed such that there may be new or increased environmental or socio-economic impacts (e.g., the addition of a workcamp for accommodation of project workers)
- any additions to facilitate communication the project that were not contemplated in the original application
- addition of any permanent or temporary workspace that was not assessed in the original application (e.g., the workspace is not covered by the ESA, not covered by existing mitigation measures, and has the potential to change the significance determinations in the ESA)

Engineering

- change in project type (e.g., deactivation to decommissioning or abandonment)
- permanent or long-term decrease in the Maximum Operation Pressure
- change of facility type
- change in pipe material and other specifications (e.g., steel to HDPE, pipe grade, wall thickness, seam type, coating type) not subject to a condition of the regulatory instrument (e.g., technical specification updates)
- change in start and end points (e.g., location)
- change in methodology of project activities (e.g., at water crossings, also see environment section below)

⁴ ~~MH 001-2013 Reasons for Decision Set Aside and Collection Mechanisms May 2014, Appendices XV and XVI~~

- change in flow direction for projects that were not designed and approved for bi-directional flow
- change in design temperature
- addition of contingency crossovers
- changes to Schedule A details (e.g., wall thickness, approximate pipe length)

Environment

- change in watercourse crossing contingency method that was not considered in the original application and is not authorized by the regulatory instrument

Socio-Economic

- changes that result in unresolved issues and concerns from directly affected persons (e.g., might include Indigenous peoples; directly affected landowners; shippers; federal, provincial and municipal agencies)
- changes, not considered in the original application, that affect the ability to exercise or practice Indigenous and treaty rights

The CER expects applicants to consider engagement for all projects. Please refer to Chapter 3, section 3.4 for additional information on what should be included in a variance application.

O.3 Project updates

Guidance

The CER expects the company to notify (“update”) the CER of any non-substantive changes to an approved project, as soon as practicable, and prior to the completion of construction. Non-substantive changes must not adversely impact environmental protection or safety reporting (see of people and property. Some examples of non-substantive changes are provided below.

As they are of a non-substantive nature, project updates do not require a variance application unless the authorizing instrument indicates otherwise, e.g., by specifying or limiting the scope of project updates.

The filing will be assessed by the CER, but project updates will not receive a formal response from the CER unless the assessment results in a variance to regulatory instruments. There are no service standards associated with project updates.

Companies are expected to ensure that all project updates are shared with potentially affected parties as committed to in the originally approved application.

Examples of non-substantive changes (i.e. project updates) that do not require a variance application

General

- non-compliances that were identified during the construction phase, but were corrected at the time; notification details should include:
 - non-compliance summary including date;
 - activity that was in non-compliance to a commitment, condition or regulation (e.g., EPP, OPR, s. 36(f)).etc.);
 - steps taken to rectify the non-compliance; and
 - steps taken to ensure the non-compliance would not be repeated.
- incorporation of a new staging area for the project
- non-substantive expansion of a previously-approved temporary workspace
- filing additional documents with respect to historical or archeological resources (e.g., clearances)

Engineering

- adding or removing a light pole at a station entrance
- relocation of the suction and discharge station tie-in piping within a station
- increase or decrease in the size of buildings within a station
- change in length of the project pipe (up to 60 meters) with the same specifications as already approved
- addition of one valve/valve assembly with the same specifications as already approved
- updates to previously approved Leave to Open exemptions for tie-in assemblies, auxiliary systems and utility gas systems
- during fit-up, the addition of a new connection, including installation of a 'T' with the same specifications as already approved
- increased number of non-hydrotested field welds
- change in the number of tie-in assemblies
- change in type of valves
- additional station piping
- additional isolation valves
- partial additions to previously-approved exemptions for added components (e.g., Leave to Open, non-destructive examination)

O.4 Changes to Conditions

The CER considers the rights and interests of affected parties when setting conditions. It expects companies to comply with conditions and to proactively manage changes leading up to and during the construction and condition tracking phase of a project. However, it recognizes that there will be times when companies may require some relief including:

1. Relief requests from:

- timing of condition filings (e.g., to reduce the number of days a filing must be made prior to commencing construction or extend a post-construction filing)
- requirements of condition filings (e.g., a company files a request to not include certain details for proprietary reasons or certain components of the condition can no longer be satisfied)
- request to file a redacted document

A company seeking relief from a condition or a component of a condition must include:

- the reason the relief is required;
- the identity of all parties that have been notified or consulted on this request;
- a description of any issues or concerns raised;
- a description of how the applicant has addressed or will address any concerns or issues raised and when;
- a description of any outstanding concerns, including how the applicant intends to address any outstanding concerns, or an explanation as to why no further steps will be taken; and
- all information necessary to support the proposed relief.

The CER will issue a formal response regarding the relief request.

Next Steps...

~~File the completed application.~~ Applicants/Companies are encouraged to include the completed relevant checklists from Appendix 1.