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9 July 2019

To: All companies under the jurisdiction of the National Energy Board (NEB), Indigenous peoples and groups including the Indigenous Advisory and Monitoring Committees (IAMCs), landowners including the Land Matters Group, and other interested persons

**Drafts for Comment - Interim Filing Guidance and Early Engagement Guide (Interim Guidance) for projects subject to future assessment by the Canadian Energy Regulator (CER) under the *Canadian Energy Regulator Act***

The National Energy Board (NEB) is issuing, for comment, draft Interim Guidance to address changes that will occur once Bill C-69 is brought into force.<sup>1</sup> Bill C-69 includes the new *Canadian Energy Regulator Act*.<sup>2</sup> The NEB is interested in receiving comments on the following documents (attached):

- draft interim guidance on new “factors to be considered” in the legislation (gender-based analysis, effects on Indigenous rights, Canada’s climate change commitments and environmental obligations); and
- the draft CER Early Engagement Guide.

**Comment Process**

The NEB will accept comments on the guidance until 8 August 2019 using an online tool called NEB Roundtable. The comments provided should be focused on the attached guidance documents, and may include suggestions for areas where additional clarity or guidance are required, or any terms that may benefit from additional clarity, or a specific definition.

NEB Roundtable can be accessed through the NEB’s website.<sup>3</sup> Commenters will be required to enter their name and email address in order to attach comments. Documents can also be attached in this online tool.

Alternatively, comments can be provided by email to [Mod.Questions@neb-one.gc.ca](mailto:Mod.Questions@neb-one.gc.ca). Please provide contact information with any comments to allow for follow up.

The NEB will post all comments received on its website. Following the comment period, the NEB intends to issue updated Interim Guidance before the legislation comes into force.

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<sup>1</sup> The date for coming into force will be set by the federal Cabinet.

<sup>2</sup> Bill C-69 also includes the *Impact Assessment Act*, under which designated projects would be assessed. The Canadian Environmental Assessment Agency, or the future Impact Assessment Agency of Canada, will issue further guidance for those projects.

<sup>3</sup> <https://www.nebroundtable.ca/>

## **Filing Manual and Applicability of Interim Guidance**

The Board's current filing guidance is found in the Board's *Filing Manual*, which is available electronically on the NEB's website under "Applications and Filings" > "Submit Applications and Regulatory Documents".<sup>4</sup> In accordance with the transition provisions in Bill C-69, any application that is undergoing an assessment immediately prior to the *Canadian Energy Regulator Act* coming into force will continue to be assessed under the *National Energy Board Act* (and *Canadian Environmental Assessment Act 2012*, as applicable). **As such, the guidance found in the *Filing Manual* will apply to applications subject to the *National Energy Board Act* and *Canadian Environmental Assessment Act, 2012*, unless otherwise directed by the Board.**

An application that is received after the coming into force of the *Canadian Energy Regulator Act* will be assessed as appropriate using the guidance found in the *Filing Manual* and the Interim Guidance.

Companies should also refer to the applicable legislation, Board decisions, regulations, and guidelines for more detailed direction, and to gain an understanding of their full obligations when applying for a project.

The Interim Guidance may be adjusted as any additional guidance is issued, or as feedback is received.

## **Legislative changes requiring new guidance**

Attached in Annex B to this letter is draft interim guidance for new factors identified in the *Canadian Energy Regulator Act*:

- Potential impacts on the rights of Indigenous peoples
- Canada's commitments in respect of climate change
- Canada's environmental obligations
- Gender-based Analysis Plus (GBA+)

In addition, the *Canadian Energy Regulator Act* provides minor updates with respect to companies' requirements for right-of-entry. Annex B provides a minor update to the *Filing Manual* Guide V to reflect this change.

## **Draft Early Engagement Guide**

Early engagement can help to identify and address issues, foster early discussions between the proponent, Indigenous groups and stakeholders, and assist in making the review process more focused and efficient. The NEB has outlined its expectations regarding the early engagement that occurs prior to the filing of an application. This is provided in a stand-alone CER Early Engagement Guide, attached in Annex C. This guide is similar to what is currently found in the *Filing Manual*, with the addition of greater detail on the steps and timing of the early engagement phase.

The new proposed early engagement phase resulted in minor changes to the *Filing Manual* Section 3.4, which are also reflected in Annex C.

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<sup>4</sup> [www.neb-one.gc.ca/](http://www.neb-one.gc.ca/). The Board also provides guidance for power line applications in its *Electricity Filing Manual*. Where appropriate, any Interim Filing Guidance would supplement the *Electricity Filing Manual* as well.

## **Future Updates**

The NEB will continue to update its website to provide information about the implementation of Bill C-69, in particular with respect to the *Canadian Energy Regulator Act*. Please see the NEB's website for information.<sup>5</sup>

In the months following coming into force and the issuance of the **Interim Filing Guidance**, the CER will review and continue to improve upon its *Filing Manual*, starting with a more extensive consultative process on the content. It is anticipated that additional guidance documents will be released through that process.

Yours truly,

*Original signed by L. George for*

Sheri Young  
Secretary of the Board

Attachments: Annex A – Background  
Annex B – CER Draft Interim Filing Guidance  
Annex C – CER Draft Early Engagement Guide and updates to  
Section 3.4 of the *Filing Manual*

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<sup>5</sup> [www.neb-one.gc.ca/](http://www.neb-one.gc.ca/)

## Annex A – Background

In 2016, the Minister of Natural Resources convened an expert Panel to conduct a targeted review of the NEB’s structure, role and mandate under the *National Energy Board Act*. Similarly, the Minister of Environment and Climate Change established a Panel to review the environmental assessment process in Canada under the *Canadian Environmental Assessment Act, 2012*. These were key elements of the Government of Canada's review of environmental and regulatory processes.<sup>6</sup>

Both Panels engaged broadly through various means with Indigenous peoples, interested stakeholders including industry, provinces and territories as well as the public. The Panel reviewing the NEB released its Report in May 2017<sup>7</sup> while the Panel reviewing the environmental assessment process released its Report in March 2017<sup>8</sup>.

Bill C-69, “*An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts*” was introduced on 8 February 2018, and encompassed many recommendations made in the two Reports. Bill C-69<sup>9</sup> proposes to replace the NEB with a new Canadian Energy Regulator (CER).

Bill C-69 would also replace the Canadian Environmental Assessment Agency with a new Impact Assessment Agency of Canada (Agency), which will lead project reviews for designated projects as defined under the *Impact Assessment Act* (including the *Regulations Designating Physical Activities* or as designated by the Minister under that Act). The assessment of designated projects subject to regulation under the *Canadian Energy Regulator Act* will be conducted by an integrated review by the CER and the Agency.

Assessments of non-designated projects conducted by the Commission (under the *Canadian Energy Regulator Act*) as well as integrated review panels (under the *Impact Assessment Act* and *Canadian Energy Regulator Act*) will be subject to legislated time limits. Time limits are set out in the *Canadian Energy Regulator Act* (for non-designated projects) and the *Impact Assessment Act* (for designated projects).

On 21 June 2019, Bill C-69 received Royal Assent. The coming into force date has not yet been communicated by the federal Cabinet.

Further information on Bill C-69 is available on the NEB’s Modernization webpage<sup>10</sup>, which can be accessed from the NEB’s main page, by selecting “Implementation of Bill C-69”.

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<sup>6</sup> <https://www.canada.ca/en/services/environment/conservation/assessments/environmental-reviews.html>

<sup>7</sup> <https://www.nrcan.gc.ca/19667>

<sup>8</sup> <https://www.canada.ca/en/services/environment/conservation/assessments/environmental-reviews/environmental-assessment-processes/building-common-ground.html>

<sup>9</sup> <https://www.parl.ca/DocumentViewer/en/42-1/bill/C-69/third-reading>

<sup>10</sup> <http://www.neb-one.gc.ca/bts/blc69/index-eng.html>

**Annex B – CER Draft Interim Filing Guidance**

- i. Climate change**
- ii. Environmental obligations**
- iii. Gender-based analysis plus (GBA+)**
- iv. Rights of Indigenous Peoples**
- v. Right-of-entry applications**
- vi. Section 3.4 (Engagement)**

## **i. CER Draft Interim Filing Guidance – Climate Change**

The *Canadian Energy Regulator Act* would require, for applications for certain projects, that the Commission take into account a number of specified factors to consider including:

“The extent to which the effects of the project/pipeline hinder or contribute to the Government of Canada’s ability to meet its environmental obligations and its commitments in respect of climate change.”

This requirement expressly applies to pipelines [paragraph 183(2)(j)], certificates for power lines [paragraph 262(2)(f)], and authorizations for offshore renewable energy projects or offshore power lines [paragraph 298(3)(f)].

This factor consists of two separate considerations:

- environmental obligations; and
- climate change commitments.

This draft Interim Filing Guidance addresses the climate change commitments.

***NOTE** – These sections of the Canadian Energy Regulator Act are consistent with paragraph 22(1)(i) of the Impact Assessment Act. The NEB is aware that Environment and Climate Change Canada (ECCC) is conducting a Strategic Assessment of Climate Change<sup>11</sup> to provide guidance to proponents and others on information requirements related to climate change throughout the impact assessment process. In July 2018 a Discussion Paper<sup>12</sup> on developing the Strategic Assessment of Climate Change was released for public comment. Further engagement is ongoing and a Draft Strategic Assessment of Climate Change document, in accordance with the Terms of Reference<sup>13</sup>, will soon be available for public comment and may influence any future filing requirements for Canadian Energy Regulator Act project applications.*

### **GHG emissions and climate change**

In order to understand the extent to which the effects of a project would hinder or contribute to the Government of Canada’s ability to meet its commitments in respect of climate change, it is necessary to assess GHG emissions. The following is proposed to replace what is currently in Table A-2 in the *Filing Manual* on GHG emissions.

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<sup>11</sup> <https://www.strategicassessmentclimatechange.ca/>

<sup>12</sup> <https://www.strategicassessmentclimatechange.ca/discussion-paper>

<sup>13</sup> <https://www.strategicassessmentclimatechange.ca/strategic-assessment-of-climate-change-terms-of-reference>

<b>Environmental Assessment: GHG Emissions and Climate Change</b>	
<i>Filing Requirements</i>	<i>Guidance</i>
<p>1. <u>Direct emissions</u> – for project construction and for project operations:</p> <ul style="list-style-type: none"> <li>i) Describe the sources of GHG emissions.</li> <li>ii) Provide a quantitative estimate of GHG emissions.</li> <li>iii) Identify and explain which climate change laws, regulations and policies apply to the GHG emissions and to what extent.</li> <li>iv) Provide the GHG emissions as a percentage of relevant total geographical and sector-based GHG emissions.</li> <li>v) Describe the mitigation measures to be implemented for GHG emissions reduction and for continuous improvement of GHG emissions management.</li> <li>vi) Discuss the extent to which the GHG emissions hinder or contribute to Canada’s ability to meet its commitments in respect of climate change.</li> </ul> <p>2. <u>Emissions from third-party energy sources</u> – if there are electrical or other energy requirements for project operations that are not considered in the direct emissions assessment:</p> <ul style="list-style-type: none"> <li>i) Describe those requirements and the expected sources of that energy.</li> <li>ii) Provide a quantitative estimate of GHG emissions associated with the generation of those energy requirements.</li> </ul>	<p>As noted in the <i>Filing Manual</i> section A.2.4 Level of Detail, the depth of analysis should be commensurate with the nature of the project and the potential for effects.</p> <p>The GHG emission assessment should, as appropriate:</p> <ul style="list-style-type: none"> <li>• include point and area sources, such as combustion (including flaring and incineration), and venting and fugitive sources;</li> <li>• include all non-negligible sources, for example, emissions from changes in land use and burning of vegetation during land clearing;</li> <li>• include a description and justification of the methods and assumptions used in the estimation; and</li> <li>• clarify what avoidance, mitigation and offset measures have been taken into account in the quantitative estimate; and describe the criteria used for this.</li> </ul> <p>In addition, quantitative estimates should, as appropriate:</p> <ul style="list-style-type: none"> <li>• be provided as quantities of individual gases and in terms of carbon dioxide equivalent; and</li> <li>• for project operations, be provided on an absolute annual basis and in intensity terms.</li> </ul> <p>Applicants may consider using appropriate up-to-date industry-wide estimates for their assessment of GHG emissions.</p> <p>The discussion of laws, regulations and policies should cover those at relevant regional, provincial, federal and international levels. Examples might include targets,</p>

<b>Environmental Assessment: GHG Emissions and Climate Change</b>	
<i>Filing Requirements</i>	<i>Guidance</i>
<p>iii) Identify and explain which climate change laws, regulations and policies apply to those GHG emissions and to what extent.</p> <p>3. With respect to addressing climate resilience, see <i>Filing Manual</i> Table A-2 – Physical and Meteorological Environment, for requirements and guidance.</p>	<p>carbon taxes, mandatory reductions or offsets, and reporting programs.</p> <p>Discussion of mitigation should include the alternative means considered to reduce GHG emissions and how the preferred option was chosen. Consider the appropriateness and potential of offsets for residual emissions, including the timing and implementation of any offsets selected.</p> <p>In assessing the extent of emissions consider relevant geographical and sector-based totals for comparison, or regional, provincial and Canadian reported emissions. Also discuss the project GHG emissions as a percentage of governmental GHG reduction targets.</p> <p>The GHG emissions assessment should consider relevant estimating and reporting guidance, such as:</p> <ul style="list-style-type: none"> <li>• Environment and Climate Change Canada’s <i>Strategic Assessment of Climate Change</i>.</li> <li>• Environment and Climate Change Canada’s <i>Technical Guidance on Reporting Greenhouse Gas Emissions</i>.</li> <li>• Environment and Climate Change Canada’s <i>Sector-specific tools to calculate emissions</i>, including: <ul style="list-style-type: none"> <li>• The Natural Gas Combustion Emissions Calculator produced by Canadian Energy Partnership for Environmental Innovation (CEPEI).</li> <li>• The CEA Agency’s <i>Incorporating Climate Change Considerations in Environmental Assessment: General Guidance for Practitioners</i>.</li> </ul> </li> </ul> <p>Provincial estimating and reporting guidance could also be followed, such as:</p>

<b>Environmental Assessment: GHG Emissions and Climate Change</b>	
<i>Filing Requirements</i>	<i>Guidance</i>
	<ul style="list-style-type: none"> <li>• Alberta Energy Regulator Manual 015 – <i>Estimating Methane Emissions (2018)</i>.</li> <li>• Alberta Energy Regulator’s Reports and Studies: <ul style="list-style-type: none"> <li>• <i>Clearstone Update of Equipment Component and Fugitive Emission Factors for Alberta Upstream oil and gas study</i>.</li> <li>• <i>Greenpath 2016 Alberta Fugitive and Vented emission inventory study</i>.</li> </ul> </li> </ul>
<b>Environmental Assessment: GHG Emissions and Climate Change – Assessment of Upstream GHG Emissions</b>	
<b>Filing Requirements</b>	<b>Guidance</b>
<p>Where relevant, based on the approach provided in Environment and Climate Change Canada (ECCC) guidance, provide an assessment of upstream GHG emissions.</p>	<p>Applicants should provide a quantitative estimate of associated upstream GHG emissions. Also discuss the extent to which those emissions would be incremental as a result of the project.</p> <p>Guidance and practice for upstream GHG emissions estimation includes:</p> <ul style="list-style-type: none"> <li>• ECCC’s <i>Strategic Assessment of Climate Change</i>.</li> <li>• ECCC’s proposed methodology for estimating the upstream GHG emissions associated with major oil and gas projects undergoing federal environmental assessments (<a href="#">Canada Gazette, Part 1, March 19, 2016</a><sup>14</sup>).</li> <li>• Previous ECCC assessments of upstream GHG emissions for past pipeline projects may provide examples.</li> </ul> <p>Explain how the assessment is consistent with the supply forecast and analysis of the need for the project.</p>

<sup>14</sup> <http://www.gazette.gc.ca/rp-pr/p1/2016/2016-03-19/html/index-eng.html>

**Economics and Financing**

Meeting climate change commitments could influence the market, supply, and economic conditions in which the project will operate. In order to understand the extent to which the effects of a project would hinder or contribute to the Government of Canada’s ability to meet its commitments in respect of climate change, it is also necessary to assess how climate change laws, regulations and policies may affect markets and influence the need for the project and its economic feasibility. The following is therefore proposed in addition to the filing guidance in Guide A, Section A.3 of the existing *Filing Manual*.

<b>Economics and Financing</b>	
<b>Filing Requirements</b>	<b>Guidance</b>
<p>Provide an explanation of how current climate change laws, regulations and policies, and financial risks or other uncertainties around commitments and future changes have been incorporated in the economic analysis of the project.</p>	<p>As noted in the <i>Filing Manual</i> section A.2.4 Level of Detail, the depth of analysis should be commensurate with the nature of the project and the potential for effects.</p> <p>For all projects, the applicant should at a minimum describe how current climate change laws, regulations and policies have been considered in assessing the expected utilization of the project, and discuss if and how the economic feasibility of the project may be impacted by financial risks and other uncertainties around changes to such climate change laws, regulations and policies.</p> <p>For a larger project, the applicant should also describe how existing climate change laws, regulations and policies have been included in relevant analysis and assumptions. Also include those laws, regulations, and policies which have been drafted and tabled at a provincial or federal level but are not yet in force. Discuss implications of these laws, regulations, and policies for supply and markets in any scenario analysis or risk assessment of these factors (e.g., applicant may consider doing a sensitivity analysis of supply and markets based on carbon tax levels). Applicants should also describe the extent to which climate change commitments have been considered.</p>

## ii. CER Draft Interim Filing Guidance – Environmental Obligations

The *Canadian Energy Regulator Act* would require, for applications for certain projects, that the Commission take into account a number of specified factors to consider. Among the factors to consider are:

“The extent to which the effects of the project/pipeline hinder or contribute to the Government of Canada’s ability to meet its environmental obligations and its commitments in respect of climate change.”

This requirement applies to, pipelines [paragraph 183(2)(j)], certificates for power lines [paragraph 262(2)(f)], and authorizations for offshore renewable energy projects or offshore power lines [paragraph 298(3)(f)].

This factor consists of two separate considerations:

- environmental obligations; and
- climate change commitments.

This draft Interim Filing Guidance addresses environmental obligations.

*NOTE – This section of the Canadian Energy Regulator Act is consistent with paragraph 22(1)(i) of the Impact Assessment Act. The NEB is aware that the Agency is developing draft guidance documents that will include guidance related to the assessment of Canada’s environmental obligations. That further Agency guidance may influence the final filing requirements for Canadian Energy Regulator Act project applications and reviews by the CER.*

<b>Environmental Obligations</b>	
<i><b>Filing Requirements</b></i>	<i><b>Guidance</b></i>
<ul style="list-style-type: none"> <li>• Provide a listing of Government of Canada environmental obligations that may potentially be relevant to the project.</li> <li>• As appropriate, provide a concordance table summarizing where in the application each of the Government of Canada environmental obligations identified and listed have been considered.</li> <li>• Where the environmental obligations are addressed in the application, this must be part of an appropriate assessment of potential effects and applicable mitigation. The assessment should include discussion on the extent to which the project hinders or contributes to Canada’s ability to meet the relevant environmental obligations.</li> </ul>	<p>As noted in the <i>Filing Manual</i> section A.2.4 Level of Detail, the depth of analysis should be commensurate with the nature of the project and the potential for effects.</p> <ul style="list-style-type: none"> <li>• Canada’s environmental obligations cover a wide range of environmental issues. The listing of environmental obligations may be organized by bio-physical element or valued environmental component, or be organized by any other alternative method of categorization that is systematic in approach.</li> <li>• Obligations may stem from agreements at the international or national level or between the Government of Canada and particular provinces.</li> <li>• In addition to obligations that have been implemented in Canadian law, there may be other environmental obligations set out in policy documents and targets or quantitative goals.</li> <li>• Legal requirements, policy direction, and targets or quantitative goals will often be specific to a particular environmental issue and so should inherently be covered in a proponent’s environmental and socio-economic assessment. Applicants should describe how the environmental obligations were considered in the assessment of potential effects and applicable mitigation for the relevant valued components.</li> <li>• <i>Example</i> – the Federal Wetland Policy would typically be referenced and inform a proponent’s environmental assessment of wetlands. In addition to the policy being considered in the assessment of project impacts on wetlands, it should also be cited in the listing of Government of Canada environmental obligations and the assessment should be referenced.</li> <li>• As also noted in both the existing <i>Filing Manual</i> guidance on Consultation (section 3.4.2) and in the draft CER Early Engagement Guide, proponents should ensure that appropriate federal government agencies are consulted to assist in identifying Canada’s environmental obligations most relevant to the project.</li> </ul>

### iii. CER Draft Interim Filing Guidance – Gender-based analysis plus (GBA+)

The *Canadian Energy Regulator Act* would require, for applications for certain projects, that the Commission take into account a number of specified factors to consider. Among the factors to consider are:

“The health, social and economic effects, including with respect to the intersection of sex and gender with other identity factors.”

This requirement applies to, pipelines [paragraph 183(2)(j)], certificates for power lines [paragraph 262(2)(f)], and authorizations for offshore renewable energy projects or offshore power lines [paragraph 298(3)(f)].

This draft Interim Filing Guidance addresses the consideration of the gender-based impacts of a project.

*NOTE – These sections of the Canadian Energy Regulator Act are consistent with paragraph 22(1)(s) of the Impact Assessment Act. The NEB is aware that the Agency is developing draft guidance documents that will include guidance related to the intersection of sex and gender.<sup>15</sup> That further Agency guidance may influence the final filing requirements for Canadian Energy Regulator Act project applications and reviews by the CER.*

### Background

Gender-based analysis plus (GBA+) is a means of identifying and analyzing how sex, gender and other identity factors might result in different groups of people being affected by a pipeline or power line project in different ways. Individual and social identity factors can include sex, gender, religion, race, social position, income, age, ability, and education. By working through a GBA+ analysis, the CER can better understand the possible disproportionate effects of a project on distinct groups of people, including on vulnerable populations and populations identified by gender.

Gender-based analysis is not new to impact assessment at the NEB; however, the CER is making the following changes to guide companies in identifying and predicting a project's socio-cultural effects on communities. This includes guidance on how to address GBA+ in the CER Early Engagement Guide, and also draft Interim Filing Guidance.

### CER Early Engagement Guide

The CER Early Engagement Guide (published under separate cover) includes the following guidance for companies:

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<sup>15</sup> <https://www.canada.ca/en/environmental-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act.html>

*“When designing project-specific engagement activities, companies should consider that the regulator expects engagement activities will be conducted in a manner that facilitates the involvement of all relevant diverse groups of people, including groups identified by gender, as identified through application of gender-based analysis plus (GBA+), as generally described in the CER Draft Interim Filing Guidance for GBA+.”*

## **CER Draft Interim Filing Guidance for GBA+**

**The sections below identify several sections of the NEB *Filing Manual* that would have additional guidance to include concepts of GBA+. Most of the language and terminology below (e.g., reference to sections A.2.4, A.2.6.1 and Table A-3, and use of the term “Aboriginal”) is from the current *Filing Manual*; additional language that has been added to address gender-based impacts is **highlighted below**. Updates to language and terminology will be included in future versions of any filing guidance released.**

Guide A.2 of the *Filing Manual* describes the CER’s environmental and socio-economic assessment responsibilities and process, and outlines the information required in a complete application. The following sections of Guide A.2 have been modified (see highlighted changes below) to provide guidance to companies on how to address GBA+ in applications.

### **A.2.4 Level of Detail**

The nature of the project, together with the environmental and socio-economic setting, establish the extent of interactions between the project and the environment. Those interactions form the basis on which effects are predicted, and for understanding the appropriate level of detail needed about the setting, interactions, and predicted effects. The extent of public interest may also guide the applicant in determining the level of detail necessary.

Where the project may impact Aboriginal communities and affect the use of traditional territory or potential or established treaty or Aboriginal rights, applicants must identify the potentially-affected Aboriginal groups and carry out effective consultations with them to determine their views and concerns. If there are potential impacts, applicants must file information about the Aboriginal groups affected, the concerns they have raised, how the applicant will address the concerns and identify any outstanding concerns. The level of detail provided should reflect the nature and extent of the impacts, the nature of the rights or interests affected and the degree of concern expressed by Aboriginal groups.

**Applicants must apply gender-based analysis plus (GBA+) to identify the potential for the project to impact diverse groups of people, including groups identified by gender, in different ways, and to design consultation processes to facilitate the effective involvement of such groups. If there are potential impacts, applicants must file information about how such groups were identified, the consultation methods employed to facilitate their involvement, as well as the concerns raised and how they will be addressed. The level of detail provided should reflect the nature and extent of the impacts, and the degree of concern expressed.**

The information provided by an applicant in its ESA must be of sufficient detail to allow the NEB to:

- identify the spatial and temporal extent of interactions between the project and the biophysical and human environments;
- identify the potential effects of the project;
- identify the potential for the environment to affect the project; and
- determine the significance of those effects.

**FYI – Example...**

As an example, a project crossing a small and ephemeral watercourse, during the dry period, with no activities or physical works within a fisheries-sensitive zone would likely require less detail on effects on fish and fish habitat than a project requiring in-stream construction work in a fish-bearing watercourse during spawning periods.

The applicant must clearly rationalize the level of detail provided. This is typically reflected through the following:

- Description of the project: information describing how the project would cross the watercourse (primary and alternative methods), and whether any physical works or construction would be required in or immediately adjacent to the watercourse and, if so, what these could be and how they might take place;
- Environmental setting: information on the nature of the watercourse, shores, riparian zones, erosive features, its fisheries and fish habitat potential;
- Interactions: information describing the proposed timing of construction, the spatial extent of interactions, any loss of riparian or fish habitat, and extent of any potential release of a deleterious substance into the watercourse;
- Predicted effects: information on any direct and indirect effects on water quality, habitat, fish and on which life including if the project may result in a serious harm to fish that are part of a commercial, recreational or aboriginal fishery, or to fish the support such a fishery, or any effects on other wildlife; and
- Results of consultation with other regulators: information detailing the results of any consultation with Fisheries and Oceans Canada should an aquatic species under SARA or its critical habitat be present; and the measures that will be taken to ensure compliance.

The ESA must include both quantitative and qualitative information. Applicants must consider the extent to which detailed maps, survey and trend data, or diagrams or figures relating to specific areas of biophysical or socio-economic elements of interest or concern may enhance the assessment. The number and nature of biophysical and socio-economic elements considered within an ESA, and the supporting level of detail necessary, will vary depending on the setting and issues raised about the project.

Table A-1 below provides examples of the range of circumstances that may lead to the need for detailed information and considers all phases of an applied for project (construction, operation, maintenance and abandonment), including the potential for accidents and malfunctions during

each phase. Where circumstances described in Table A-1 exist, Tables A-2 and A-3 describe the specific details to include in the assessment.

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### **A.2.6.1 Identification and Analysis of Effects**

#### **Filing Requirements – Identification and Analysis of Effects**

1. Describe the methods used to predict the effects of the project on the biophysical and socioeconomic elements, and the effects of the environment on the project.

This Manual assumes a valued component based approach to effects assessment where the application focuses on those biophysical or socio-economic elements, or a subset of those elements (see guidance below), that may be affected by a project and are of concern or value to the public and Aboriginal groups. Applicants must identify valued components for which effects are predicted and explain why and how the valued components were identified.

If another method is used to assess potential effects on the biophysical and socio-economic elements described in Tables A-1, A-2, and A-3, then provide the details and rationale on that method.

Provide the details of any important aspects of uncertainty associated with the analysis.

Where professional knowledge or experience is cited, describe the extent of professional judgment or experience relied upon, the rationale for that extent of reliance and how the resulting conclusions or decisions were reached

2. Predict the effects associated with the proposed project, including those that could be caused by construction, operations, decommissioning or abandonment, as well as accidents and malfunctions. Also include effects the environment could have on the project.

#### **FYI – Reminder...**

If there are no predicted interactions between project activities and a particular biophysical or socioeconomic element, then no further analysis is necessary for that element. Instead, provide a sufficient description of the project or setting to demonstrate why no interactions are predicted.

For those biophysical and socio-economic elements or their valued components that require further analysis (see Table A-1), provide the detailed information outlined in Tables A-2 and A-3. This must include, but is not limited to, a description and quantification of:

- spatial and temporal boundaries for the effects analysis of each biophysical or socioeconomic element or valued component associated with the project;
- local and regional conditions of each biophysical or socio-economic element or valued component (i.e., location, distribution, abundance, status, sensitivity to the project, ability

to recover, and natural variation of valued components, as appropriate), including how this is expected to change from baseline if the project were to proceed;

- factors influencing change, the limiting factors, and the natural variation for each valued component, if known;
- magnitude and reversibility of any predicted change from baseline conditions;
- local, regional and federal management objectives (e.g., recovery strategies, action plans, management plans and land use plans) and thresholds, and identify how the effects of the project relate to such strategies, plans, objectives or thresholds;
- methods used for any modelling, including the assumptions used and limitations of the models; and
- information about reporting requirements for all levels of government (e.g., for GHGs), if applicable.

For each valued component, provide or reference any supporting information used in the project effects analysis, such as:

- public comments;
- consultations with other regulators and departments or agencies;
- scientific literature;
- local and traditional knowledge;
- status reports;
- approved recovery strategies, action plans and management plans for species at risk; and
- follow-up studies and case studies from other projects.

**FYI – See also...**

Filing requirements specific to cumulative effects assessment are provided in Subsection A.2.7.

### **Guidance – Identification and Analysis of Effects**

The identification and analysis of project effects builds directly on scoping, the description of the environmental and socio-economic setting, and the level of detail considerations described above.

Typically, applicants use a valued component approach to focus the effects analysis on practical and representative components of the biophysical and socio-economic environment. Valued components could be the broad elements described in Tables A-1, A-2 and A-3 or a representative subset of those elements. In that way, the analysis of potential effects focuses on the components of those biophysical or socio-economic elements where project-environment interactions are more readily assessable, and on the interactions that may be of concern to the public or Aboriginal groups (often termed Valued Environmental Components [VECs] or Valued Socio-Economic Components [VSCs]). The valued components selected must:

- be indicative of predicted effects that could result from the project over time;
- have baseline data available in order to determine the significance of effects; **and**

- be able to reflect measurable changes that result from the project effects over time;
- be sufficient to identify different effects on diverse groups of people, including groups identified by sex and gender, as identified through gender-based analysis plus (GBA+); and
- be sufficient to identify potential effects on the exercise of Indigenous rights, including effects on the resources involved in or required for the exercise of those rights, specific locations of cultural importance where those rights are exercised, and an Indigenous group's cultural traditions, laws and governance systems and how those systems inform the manner in which they exercise their rights.

The analysis should result in an understanding of where uncertainty about project-environment interactions may exist, or where information gaps necessary to predict effects may remain.

### *Spatial and Temporal Boundaries*

The spatial and temporal boundaries must:

- be provided for each valued component, along with a rationale for selecting those boundaries;
- include the area over which effects on the valued components may occur. This area could include a population boundary, home range, airshed, watershed, Aboriginal traditional land and resource use areas, or municipal or regional planning districts;
- include the duration that each valued component may be affected;
- consider the effects of the project on the valued component and the extent to which those effects are measurable;
- include all phases of the project; and
- not be constrained by jurisdictional boundaries.

### *Analysis*

The analysis methods must be fully disclosed and meet the study needs. In addition to meeting the requirements of other regulations (*e.g.*, *Species at Risk Act* [SARA], *Migratory Bird Convention Act* [MBCA], *Fisheries Act*, etc.), the analysis of project effects must take into account local, regional and federal policy or management objectives (*e.g.*, recovery strategies, action plans, management plans and land use plans) and thresholds. Where there are no management objectives or thresholds, include information on the current state of knowledge on the valued component. After a review of the available literature, if the state of knowledge is incomplete or there is substantial uncertainty, identify any information gaps, and indicate if and how they will be filled. Where uncertainty exists about the project effects on a valued component, describe how the inspection and monitoring program will reduce the uncertainty.

Where there is applicable local and traditional knowledge, it must be included in the ESA. See Section 3.4 – Consultation, for further details on consulting with Aboriginal persons and groups and gathering traditional knowledge.

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### Table A-3: Filing Requirements for Socio-Economic Elements

#### **FYI – Reminder ...**

Filing Requirements for an effects assessment are described in Subsections A.2.5 and A.2.6. Table A-1 in Subsection A.2.4 provides examples of the circumstances and interactions that lead to the need for detailed information and considers all phases of an applied for project (construction, operation, maintenance and abandonment), including the potential for accidents and malfunctions during each phase. Table A-3 was designed to assist Applicants in identifying detailed information needs specific to individual socio-economic elements. The elements and circumstances described in the table are not exhaustive.

#### **GBA+ throughout**

Both the adverse effects of the project, as well as project benefits, can impact people in different ways depending on a variety of identity factors, such as sex, gender, age, culture, Indigeneity, and ability. Gender-based analysis plus (GBA+) can help to consider such differences. In the context of assessing the effects of a proposed project, this includes asking questions such as:

- What are the relevant identity factors that might determine the extent to which someone is positively or negatively affected by the project?
- How are adverse effects and benefits of a project expected to vary according to these relevant identity factors?
- Are tailored mitigation measures available to address the expected differences in the impact of adverse effects and distribution of benefits?
- Are such measures practical for the project, and can effectiveness be monitored over time?

GBA+ should be applied when considering each of the socio-economic elements in the following tables. Note that differing identity factors might be relevant within different elements – for example, the group of people that may be differentially affected by project impacts on resource use might differ from the group of people that may be differentially affected by project impacts on human health or project-related employment.

Further discussion on GBA+ is available via the Women and Gender Equality Canada federal government website. Specific guidance on the application of GBA+ to impact assessments is being developed by the Impact Assessment Agency of Canada and should also be consulted when available.

**iv. CER Draft Interim Filing Guidance – Rights of Indigenous Peoples**

The *Canadian Energy Regulator Act* would require, for applications for certain projects, that the Commission take into account all considerations that appear to it to be relevant and directly related to the project, including a number of specified factors to consider. Among the factors to consider are:

“The effects on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*.”

This requirement applies to pipelines [paragraph 183(2)(j)], certificates for power lines [paragraph 262(2)(f)], and authorizations for offshore renewable energy projects or offshore power lines [paragraph 298(3)(f)].

This draft Interim Filing Guidance addresses impacts to the rights of Indigenous peoples.

*NOTE – The NEB is aware that the Agency is developing draft guidance documents that will include guidance related to the assessment of effects on the rights of Indigenous peoples. That further Agency guidance may influence the final filing requirements for Canadian Energy Regulator Act project applications and reviews by the CER.*

<b>Rights of Indigenous Peoples</b>	
<b><i>Filing Requirements</i></b>	<b><i>Guidance</i></b>
1. Describe the Indigenous rights of the potentially affected Indigenous peoples in the project area.	<p>Applicants should describe for each potentially impacted Indigenous community:</p> <ul style="list-style-type: none"> <li>• The nature of the Indigenous rights that may be impacted by the proposed project;</li> <li>• A description of the source of the Indigenous rights; <ul style="list-style-type: none"> <li>○ this may include either a general description of an asserted right, or where the right is established could include a description of the source of the right in Treaty, legislation, or as established through case law;</li> </ul> </li> <li>• Any relevant additional information regarding the Indigenous rights in the project area. When describing an Indigenous right that may apply to more than one potentially impacted Indigenous community, such as a treaty right, a more general description that would be applicable to all communities may be provided.</li> </ul>

	<p>The information provided on the nature and extent of the Indigenous rights in the project area should be sufficiently detailed to allow the Regulator to understand and assess the potential effects of the proposed project on the Indigenous rights and, as appropriate, consider relevant mitigation and accommodation measures.</p> <p>Applicants should engage with potentially impacted Indigenous communities to seek to understand the Indigenous rights as they are asserted by rights-bearing communities. Applicants should review the CER Early Engagement Guide, and should engage with potentially impacted Indigenous communities as soon as is practicable in the project's development in order to allow adequate time to discuss and understand each community's understandings, practices and assertions related to their rights.</p> <p>Applicants should also consult and document any relevant secondary information sources that may assist in describing the Indigenous rights in the project area. Applicants may also wish to consult other relevant government departments or Indigenous organizations that may have information or expertise.</p>
<p>2. Describe how Indigenous rights are exercised or practiced in the project area.</p>	<p>In describing the ways in which Indigenous rights are exercised, applicants should work directly with Indigenous peoples to seek to understand and document the specific values, practices, activities, customs or traditions that are connected to and are undertaken in relation to the rights identified.</p> <p>Applicants may also wish to consult and document any relevant secondary information sources that may assist in describing the exercise of Indigenous rights in the project area.</p> <p>When working with Indigenous communities, or based on any secondary information sources, applicants should provide sufficient detail to</p>

	<p>describe how general or specific rights are being exercised, such as:</p> <ul style="list-style-type: none"> <li>• the quality, quantity or distribution of resources involved in or required for exercise of the rights (for example, any preferred wildlife or plant species utilized, the cultural, ceremonial or nutritional uses or importance of resources, and perception of quality, cultural connections to a particular species);</li> <li>• access to the resources used or required to exercise the rights (for example, physical access or travel ways to access culturally important or harvesting locations, and distance from communities of residence);</li> <li>• timing and seasonality of the exercise of rights, including how often the Indigenous right may be practiced or exercised;</li> <li>• locations or areas of cultural importance where Indigenous rights are exercised.</li> </ul> <p>Applicants should identify and incorporate within their effects assessment, preferably beginning at the assessment design phase, those valued components that are most relevant for an assessment of the project’s potential effects on the exercise of Indigenous rights. Applicants should also work with Indigenous communities to ascertain whether any Indigenous knowledge is being provided in confidence, and if so, ensure that confidential Indigenous knowledge can be appropriately protected from unauthorized disclosure. Applicants should strive to reach agreements or utilize existing community protocols with respect to Indigenous knowledge.</p> <p>Applicants should also describe how other information in their application, including information about traditional land and resource uses in the project area, are relevant to and have been used to describe the practice of Indigenous rights.</p>
3. Describe the context in which the Indigenous rights are exercised or practiced in the project area.	When describing the rights exercised in the project area, and the ways in which they are being exercised, consider the cultural, social, and

	<p>bio-physical context in which the exercise of the right occurs. Proponents should work with Indigenous communities to seek to understand, document and address wherever possible, the underlying values, traditions and cultural practices associated with the exercise of rights.</p> <p>Applicants should also seek to understand and give consideration to how past and present social and environmental conditions, and the changes to those conditions over time, may have affected the exercise of Indigenous rights and associated culture. This context should consider matters such as:</p> <ul style="list-style-type: none"> <li>• any historical or current circumstances that may affect traditional Indigenous practices, such as the extent to which lands have been taken up for purposes such as agricultural, industrial or resource development;</li> <li>• any effects of government regulation on traditional Indigenous practices such as harvesting quotas or regulation;</li> <li>• how the Indigenous group’s cultural traditions, laws and governance systems inform the manner in which they exercise their Indigenous rights.</li> </ul> <p>Applicants should also describe, where applicable, any other current and relevant factors or circumstances that may influence or alter the exercise of identified Indigenous rights. For example, where land use or resource management changes have occurred or are anticipated that may negatively or positively affect the exercise of rights, these should be described.</p>
<p>4. Describe the nature and the extent of the project’s effects on the exercise or practice of Indigenous rights in the project area.</p>	<p>Applicants should describe the potential adverse impacts of the project’s components and physical activities on the exercise or practice of the identified general and specific Indigenous rights of each potentially impacted Indigenous community, including (but not limited to):</p> <ul style="list-style-type: none"> <li>• effects on the quality, quantity or distribution of resources involved in or required for exercise of the right;</li> </ul>

	<ul style="list-style-type: none"> <li>• effects on access to the resources used or required to exercise the right;</li> <li>• effects relating to timing and seasonality of the exercise of rights;</li> <li>• effects on specific areas of cultural importance where Indigenous rights are exercised;</li> <li>• effects on an Indigenous community’s cultural traditions, laws and governance systems that inform the manner in which they exercise their Indigenous rights.</li> </ul> <p>Where communities have identified or provided thresholds or criteria that describe levels or conditions relating to their ability to meaningfully exercise Indigenous rights, applicants should:</p> <ul style="list-style-type: none"> <li>• describe the basis of the threshold or criteria, including quantitative or qualitative measures;</li> <li>• provide any other data or Indigenous knowledge on relevant thresholds or criteria, provided; and</li> <li>• describe how those thresholds or criteria have been used, as applicable, in the assessment.</li> </ul>
<p>5. Describe the measures to be implemented to avoid, reduce, eliminate or accommodate potential adverse effects of the project on the exercise of Indigenous rights. Also describe any measures that would enhance or support the exercise or practice of Indigenous rights in the project area.</p> <p>Where there may be any residual effects, after mitigation or accommodation measures are implemented, describe the nature and extent of these, including their contribution to any potential cumulative effects.</p>	<p>Describe those measures that, when implemented, would avoid, reduce, eliminate or accommodate the potential adverse impacts of the project on the exercise of Indigenous rights. These measures must clearly describe how the applicant intends to implement them, and may go beyond mitigation measures that are developed to address potential adverse environmental, health, social and economic effects of the project.</p> <p>Applicants should ensure that they clearly describe:</p> <ul style="list-style-type: none"> <li>• how the measures directly address the potential effects on the exercise of rights;</li> <li>• the extent to which the measures will avoid, reduce, eliminate or accommodate the potential adverse impacts of the project on the exercise of Indigenous rights; and</li> </ul>

	<ul style="list-style-type: none"> <li>• whether any residual effects on the exercise of rights would remain after the measures are implemented.</li> </ul> <p>Applicants should include perspectives or specific suggestions raised by potentially impacted Indigenous communities, including any views on the effectiveness of particular mitigation measures on such impacts. Applicants should also describe any responses, as applicable, to the views provided by potentially impacted Indigenous communities.</p> <p>If any suggestions or recommendations made by affected Indigenous communities extend beyond the specific scope of the project, or the applicant's ability to fully or partially address, these should be clearly described, including a description of why the applicant would not be able to adopt or address them, either partially or fully.</p> <p>Applicants should also consider measures that would support, improve or provide benefit to the exercise of Indigenous rights. Where such measures are described elsewhere in an application (such as measures relating to employment, procurement, or monitoring), this should be referenced. Applicants should ensure that they clearly describe how such measures would potentially support, improve or provide benefit to the exercise of Indigenous rights. Where such measures are proposed, applicants should also describe how these measures have been discussed with potentially impacted Indigenous communities, including any comments or recommendations made by Indigenous communities, or any agreements entered into.</p>
6. Describe, if relevant, any measures or recommendations identified, to address potential adverse effects on Indigenous rights that may require potential accommodations or actions by Federal, Provincial or municipal governments.	As applicable, applicants should describe any measures that have been identified to address potential effects on the exercise of Indigenous rights that are directly or indirectly related to, but go beyond the scope of the project, or the applicant's ability to fully or partially address. In

	<p>these instances, applicants should include additional detail that describes, as relevant:</p> <ul style="list-style-type: none"><li>• The department, agency, or branch of government that has been identified as having a relevant authority or may be best placed to address or accommodate the potential effect;</li><li>• a summary, as applicable, of consultations undertaken with these departments agencies or branches of government about the potential effects; and</li><li>• a summary of any recommendations.</li></ul> <p>Applicants should review Chapter 3 of the <i>Filing Manual</i> for guidance and requirements relating to consultation with governments.</p>
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## v. CER Draft Interim Filing Guidance – Right-of-Entry Applications

### Background

Where a company does not acquire land required for an approved pipeline through negotiations with the landowner, it may apply to the Regulator for a right-of-entry order pursuant to section 324 of the *Canadian Energy Regulator Act* and the *National Energy Board Rules of Practice and Procedure, 1995* (Rules).

Guide V of the *Filing Manual* provides guidance regarding the information that the company must give to the landowner, under section 324 of the *Canadian Energy Regulator Act*, prior to applying for a right-of-entry order.

Guide V further outlines the information required in an application to the CER for a right-of-entry order, as established in section 55 of the Rules. As set out in the guidance below, the Rules state that the filing to the CER must indicate, among other things, that the notification to the landowner contained all the information as required under section 324 of the *Canadian Energy Regulator Act*.

### Guide V – Right-of-Entry Application

**(The following pages would replace the existing *Filing Manual*, Guide V, to account for *Canadian Energy Regulator Act* section 324 changes)**

#### Goal

The application contains documentation with respect to the right-of-entry process. The documentation addresses all matters related to the request for an immediate right-of-entry order demonstrating that landowners and other persons have been notified and their rights have been protected.

Section 324 of the *Canadian Energy Regulator Act* states:

#### Immediate right of entry

**324(1)** Subject to subsection 317(1), if the Commission considers it appropriate to do so, the Commission may, by order, on application to the Regulator in writing by a company, grant to the company an immediate right to enter any lands on any conditions specified by the Commission in the order.

#### Notice

**(2)** The Commission is not authorized to make an order under subsection (1) unless the Commission is satisfied that the owner of the lands in question has, not less than 30 days and not more than 60 days before the date of the application, been served with a notice setting out:

- (a)** the purpose of the right of entry referred to in subsection (1);

- (b) the date on which the company intends to make its application to the Regulator under subsection (1);
- (c) the date on which the company intends to enter the lands and the period during which the company intends to have access to the lands;
- (d) the address of the Regulator to which any objection in writing that the owner may make concerning the issuance of the order may be sent; and
- (e) a description of the right of the owner to an advance of compensation under section 325 if the order is issued and the amount of the advance that the company is prepared to make.

### **Filing Requirements**

In accordance with the *Canadian Energy Regulator Act* and the Rules, in order to apply for a right-of-entry order under section 324 of the Act, a company shall:

- (1) File an application with the Regulator not less than 30 days and not more than 60 days after the date of service of the notice on the owner of the lands, as set out in subsection 324(2) of the Act.
- (2) The application must be served on the owner of the lands on the same day that the application is filed with the Regulator.
- (3) The application must contain:
  - (a) a copy of the notice described in subsection 324(2) of the Act;
  - (b) evidence that the notice has been served on the owner of the lands
    - (i) not less than 30 days and not more than 60 days prior to filing the application with the Regulator, and
    - (ii) in accordance with subsection 8(8) of the Rules, or in any manner ordered by the Commission;
  - (c) a schedule that is proposed to be made part of the order sought and that contains, in a form suitable for depositing or registering in the appropriate land registry or land titles office, a description of
    - (i) the lands in respect of which the order is sought,
    - (ii) the rights, titles or interests applied for in respect of the lands, and
    - (iii) any rights, obligations, restrictions or terms and conditions that are proposed to attach to:
      - (A) the rights, titles or interests applied for in respect of the lands,
      - (B) any remaining interest or interests, or
      - (C) any adjacent lands of the owner;
  - (d) a current abstract of title to the lands, a certified copy of the certificate of title to the lands or a certified statement of rights registered with the appropriate land registrar;

- (e) a copy of the relevant provisions of the Rules, outlining how an objection may be made to the Commission; and
- (f) evidence that the application, including the information set out in sections (a) to (e), has been served on the owner of the lands.

In addition to the requirements of section 324 of the *Canadian Energy Regulator Act* and the Rules, applications shall also include the following information:

1. A summary of the land negotiation process conducted between the applicant and the owner of the lands for which a right-of-entry order is sought, including the dates of meetings held between the applicant and the owner of the lands;
2. The date of service of notice on the landowner pursuant to subsection 322(1) of the *Canadian Energy Regulator Act*;
3. If applicable, the date of service of notice on the landowner pursuant to section 201 of the *Canadian Energy Regulator Act*; and
4. A discussion of outstanding issues and the reason(s) that a voluntary agreement could not be reached.

### **Guidance**

Pursuant to the Rules, the landowner may file a written objection with the CER any time after receipt of the notice up to 10 days after the date the company files the right-of-entry application.

In the event the Commission approves the right-of-entry order, the order must be deposited in the appropriate land registry or land titles office, pursuant to section 326 of the *Canadian Energy Regulator Act*.

The date of service of notice on the landowner pursuant to section 201 of the *Canadian Energy Regulator Act* will provide the Regulator with confirmation that, where the lands that are the subject of the right-of-entry application are required for the detailed route of a project, the landowner was served notice of the filing of the plan, profile and book of reference for the detailed route.

## **vi. CER Draft Interim Filing Guidance – *Filing Manual* Section 3.4 (Engagement)**

As a consequence of the creation of a new proposed early engagement phase (see the CER Early Engagement Guide, attached), the NEB has identified some changes to the *Filing Manual* Section 3.4 (Consultation). Similar changes would ultimately be required in Chapter 5 of the *Electricity Filing Manual*, and those would be undertaken in future revisions of that filing manual.

### **3.4 Engagement: CER Filing Requirements and Guidance for Companies**

The CER expects an applicant to have a company-wide Engagement Program that establishes a systematic, comprehensive and proactive approach for the development and implementation of project-specific engagement activities. The following information is required within the application:

- an overview of the company-wide Engagement Program;
- an overview of the project-specific engagement activities; and
- a description of the outcomes of the project-specific engagement activities; or
- the circumstances and justification for not undertaking project-specific engagement activities.

Each of these information requirements is discussed in further detail in the following sections.

The CER also expects companies to continue effective engagement activities with the public and Indigenous communities during the construction and operation phases of a project. The CER's requirements for engagement related to operations and maintenance activities on pipelines can be found on the CER's website in the "*Operations and Maintenance Activities on Pipelines Regulated Under the National Energy Board Act: Requirements and Guidance Notes: (January 2013)*".

#### **3.4.1 Company-wide Engagement Program**

##### **Goal**

The application outlines the corporate policy or vision with respect to engagement and the principles and goals that guide the applicant's Engagement Program.

##### **Filing Requirement**

Provide an overview of the company's engagement approach, which should include:

- the corporate policy or vision with respect to engagement.
- the principles and goals established for the applicant's Engagement Program; and
- a copy of the Indigenous engagement policy, along with any more specific related documented policies and principles, such as, for collecting traditional knowledge or traditional use information.

## Guidance

The CER expects an applicant to have an Engagement Program to anticipate, prevent, mitigate and manage conditions which have the potential to affect persons and communities. An Engagement Program should be appropriately integrated into a company's overall management system to provide protection for the public, employees, property and the environment throughout the lifecycle (design, construction, operation, maintenance, abandonment) of a pipeline system. An Engagement Program should be based on the elements of a standard management system (for example, the management system elements described in the CER's *Onshore Pipeline Regulations*). Additional guidance is provided in the NEB's Draft Expectations - Public Involvement Program [[Filing A22289](#)]<sup>16</sup>.

The CER also expects applicants to consider the distinct language needs of the potentially affected persons and/or communities and include a description of this consideration in their application. Further to section 41 of the *Official Languages Act*, the CER is also committed to fostering the full recognition and use of both English and French in Canadian society. The CER recognizes the importance of considering official languages when developing and implementing an engagement program, to result in effective communication with potentially affected persons in the official language of their choice.

### 3.4.2 Design of Project-Specific Engagement Activities

#### Goal

The application indicates why the design of project-specific engagement activities is appropriate for the nature of the project in alignment with the company's Engagement Program.

#### Filing Requirement

Provide an overview of the project-specific engagement activities and the factors that influenced the design, which should include:

- a list of potentially affected persons or communities that were engaged for the project, including:
  - landowners, local residents, and land or waterway users;
  - government authorities; and
  - Indigenous communities;
- a sample of the information package that the applicant has provided to all potentially affected persons and communities as outlined in the CER Early Engagement Guide;
- methods, locations, and timing of engagement activities, including where community cultural protocols were identified and followed;
- manner in which relevant languages were considered, including in particular how project information will be provided and communicated to potentially affected persons or

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<sup>16</sup> <https://apps.neb-one.gc.ca/REGDOCS/Item/Filing/A22289>

communities in the official language of their choice to ensure effective and meaningful participation in the CER process;

- procedure for responding to issues and concerns; and
- plans for future engagement and follow-up throughout the operations phase of a project, which may include activities such as public awareness programs, continuing education and engagement with persons regarding proposed operations that may potentially affect them.

## **Guidance**

The CER expects that applicants will consider engagement for all projects. Depending on the project scope, that could mean carrying out extensive engagement activities or a simple engagement activity such as notifying a single landowner. Applicants must justify the extent of engagement carried out for each application. For additional details, applicants should refer to “CER Expectations for Companies during the Early Engagement Phase”.

## **Local and Traditional Knowledge**

The application should, where relevant, include local and traditional knowledge. This information and knowledge should be integrated, where appropriate, into the design of the project. Where local and traditional knowledge is obtained, provide an opportunity for the individual who provided the information to confirm the interpretation of the information and how it was used in the project design.

### **3.4.3 Outcomes of Project-Specific Engagement Activities**

#### **Goal**

The application describes the results of the engagement activities conducted to-date for the project, in sufficient detail to demonstrate:

- that all persons and communities potentially affected by the project are aware of: the project, the project application to the CER, and how they can contact the CER with outstanding application-related concerns;
- that those potentially affected by the project have been adequately engaged, and
- that any concerns raised have been considered, and addressed as appropriate.

#### **Filing Requirement**

Describe the outcomes of the engagement activities conducted for the project, including:

- a summary of the comments and concerns expressed by potentially affected persons or communities;
- a summary of the response made regarding each of the concerns or comments, including:

- the measures taken, or that will be taken to address those concerns or an explanation of why no further action is required to address the concerns or comments; and
  - the methods and dates that the response was made to the person(s) who raised the concern(s);
- how outstanding concerns will be addressed;
- how input from persons or communities has influenced the design, construction or operation of the project;
- details regarding discussions with Indigenous communities, which includes each of the items listed above and:
  - the identity of all Indigenous communities contacted, how they were identified, when and how they were contacted and who was contacted;
  - any relevant, non-confidential written documentation received regarding engagement;
  - any concerns about the project raised by Indigenous communities that have been discussed with any government department or agency, including when contact was made and with whom; and
  - where there is any known involvement of the Crown in consultations with the Indigenous communities with respect to the project, describe the Crown involvement; and
- the details and results of the engagement activities undertaken with all persons who may be affected by any changes to the project (e.g., persons that would be uniquely impacted following changes to the project as a result of engagement activities).

Confirm that potentially affected persons or communities will receive adequate notice that:

- the application has been filed with the CER;
- the process by which potentially affected persons and communities can contact the CER at any point before the CER makes its decision; and
- the methods and timing of notification.

## **Guidance**

The Applicant should maintain records and be prepared to further demonstrate the adequacy of engagement activities that have been conducted with all potentially affected persons and communities.

For engagement activities that could involve a large number of people, it might not be practical to list all individuals that were engaged. It may be more practical to describe the main groups and why they are identified. For example, where a group has a common concern or association, describe:

- the group;
- their location;
- their common concern; and
- the authority of any representatives of the group.

### **3.4.4 Justification for Not Undertaking Engagement Activities**

#### **Goal**

The application provides justification as to why it was not necessary to carry out engagement activities with respect to the proposed project.

#### **Filing Requirement**

Explain why engagement activities were considered unnecessary, including:

- the scenario or scenarios that are applicable to the application (i.e., equivalent engagement activities, no or negligible environmental or socio-economic effects, facilities within company owned or leased lands); and
- evidence that these scenarios meet the requirements of this section of the manual.

#### **Guidance**

Engagement activities might not be necessary if the applicant can demonstrate that one or more of the following scenarios applies.

##### **Equivalent Engagement Activities**

Engagement has already been undertaken as required by another agency and the applicant can demonstrate it is relevant to the current project and is equivalent to the CER's guidance and requirements.

For example, where a road widening requires that an existing CER-regulated pipeline be relocated, the responsible transportation authorities might conduct engagement activities for the road widening that includes engagement regarding the relocation of the pipeline. The pipeline application would then include a description of these engagement activities and how it meets the requirements of this manual.

##### **No or Negligible Environmental or Socio-economic Effects**

Applicants will be conducting environmental and socio-economic assessments of the project in accordance with the requirements of the *Canadian Energy Regulator Act* and this manual (see Guide A within Chapter 4).

Through this assessment process, applicants will determine the potential adverse effects of the project. If the project's potential environmental and socio-economic effects are negligible, engagement activities might be unnecessary. A project with negligible effects might exist where many or all of the following conditions are met:

- the proposed project is of a small scale and is localized;

- all construction is to occur on previously disturbed land;
- there is no potential for an impact on navigation;
- the land acquisition process is complete and landowner concerns have been addressed, or the project work is confined to company owned or leased land;
- there are no residents near the proposed project;
- no other land uses or waterway uses or interests would be affected;
- there is no potential for traditional use activities to be affected by the project;
- there is no potential for cumulative environmental effects;
- there would be negligible environmental effects associated with construction and operation of the project;
- there is no increase in the storage or disposal of toxic substances;
- there is no increase in noise emissions;
- there is no increased emissions in air contaminants; and
- there is no potential for local nuisance, including potential for increased dust or traffic.

Because the identification of potential impacts may depend on engagement with those people potentially affected and because an impact assessment may not yet be completed, applicants should generally be conservative when contemplating the possibility that engagement may not be necessary. When and where recent previous project assessments or engagements are relied on, relevant details of these should be cited in the submission to the CER.

### **Facilities within Company Owned or Leased Lands**

If the application is for a facility within company owned or leased land, engagement activities might be unnecessary. This may be the case where the application is a facilities application that relates to work contained within the confines of land the applicant owns or leases (as distinct from land upon which the applicant holds an easement only), except where those facilities or activities:

- relate to an increase in the storage or disposal of toxic substances;
- could result in impacts to traditional land and resource use;
- could result in increased noise emissions;
- could result in increased emissions of air contaminants; or
- could result in local nuisance, including the potential for increased dust or traffic.

## **Annex C – Canadian Energy Regulator (CER) Draft Early Engagement Guide**

### **CER Expectations for Companies during the Early Engagement Phase**

#### **1. Introduction**

As noted in the preamble to the *Canadian Energy Regulator Act*, the Government of Canada is committed to using transparent processes that are built on early engagement and inclusive participation and under which the best available scientific information and data as well as Indigenous knowledge are taken into account in decision-making.

The purpose of the CER Early Engagement Guide is to provide companies with the CER's expectations, including filing requirements and guidance, during the early engagement phase for non-designated projects. Non-designated projects are those projects under the jurisdiction of the CER that do not trigger a review under the *Impact Assessment Act*. At the time a company files an application it will be required to follow the CER's expectations as described in the relevant Filing Manual (specifically, the *Filing Manual* and the *Electricity Filing Manual*). The Filing Manuals require companies to explain and demonstrate the extent to which they followed the expectations laid out in the Early Engagement Guide.

The early engagement phase covers the pre-application phase: the period of time from when a company initiates conceptual plans to develop a project until the company submits an application for a non-designated project to the CER. In particular, this guidance document covers proposed projects that involve constructing or modifying facilities that require an application under the following sections of the *Canadian Energy Regulator Act*: section 182 (applications for pipeline certificates), section 214 (applications for pipeline orders), section 248 (applications for power line permits), section 262 (applications for power line certificates) and section 298 (applications for offshore renewable energy projects and offshore power lines). [Note: for projects that also trigger a federal review under the *Impact Assessment Act*, further guidance may be available on the website<sup>17</sup> of the Agency.]

The CER is committed to making decisions or recommendations on applications using processes that are fair, transparent, timely and accessible. In order to do this, the CER sets out the following expectations for companies during the early engagement phase.

First, the CER expects a company to undertake its engagement activities in a manner consistent with the principles of meaningful engagement, including:

- be initiated as soon as possible in the planning and design phase of a project;
- provide clear, relevant and timely information to potentially affected persons and communities;
- be accessible to and inclusive of all potentially affected persons and communities;
- be shaped by input from potentially affected persons and communities (e.g., appropriate methods, timing, language, cultural aspects, and format);

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<sup>17</sup> <https://ceaa-acee.gc.ca/>

- provide appropriate and effective opportunities for all potentially affected persons and communities to learn about a project, and to provide comments and concerns about a project to the company;
- be responsive to the needs, inputs and concerns of potentially affected persons and communities, and demonstrate how this input informed the proposed design, construction and operation of the Project; and
- continue throughout the regulatory process, as well as the construction and operation phases of a project.

Second, the CER expects a company to have an Engagement Program to anticipate, prevent, mitigate and manage conditions which have the potential to affect persons and communities. An Engagement Program should be based on the elements of a standard management system (for example, the management system elements described in the *Onshore Pipeline Regulations* (OPR). Additional guidance is provided in the Draft Expectations for Public Involvement Programs [Filing A22289<sup>18</sup>].

Providing potentially affected persons and communities with meaningful opportunities to engage early facilitates mutual understanding, improves regulatory processes and decisions, and promotes outcomes reflective of the public interest. The early engagement phase is important because it establishes the foundation for a company to develop positive relationships with people that are potentially affected by the project, including landowners, Indigenous communities, municipalities and others.

## 2. Overview of the Early Engagement Phase

The engagement activities during the early engagement phase are largely performed by companies. Conducting these engagement activities in a manner consistent with the principles of meaningful engagement will facilitate the effective exchange of information. This will create opportunities for the company to learn about the concerns of potentially affected persons and communities, discuss how those concerns can be addressed through project design, construction and operations, and develop measures to reduce and mitigate the effects a project may have on the interests of persons and communities. The CER process acts as a necessary and important check on the engagement activities carried out by the company.

The steps for the CER and the company to follow during the early engagement phase are highlighted below and include references to more detailed guidance material within this document. Appendix A provides a diagram of the steps in the early engagement phase.

- Step 1     The company identifies potentially affected persons and communities. The company should request a preliminary traditional territory analysis from the CER to obtain a list of potentially impacted Indigenous communities that should be included in engagement activities.
- Step 2     The company designs project-specific engagement activities based on its Engagement Program. For each project, companies are responsible to justify the extent of

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<sup>18</sup> <https://apps.neb-one.gc.ca/REGDOCS/Item/View/564072>

engagement carried out and if applicable, justification for not undertaking engagement activities.

- Step 3 The company sends an information package to all potentially affected persons and communities identified in step 1. The CER Early Engagement Guide includes the minimum information required in the information package.
- Step 4 Ongoing engagement. The company continues engagement activities with potentially affected persons and communities.
- Step 5 Project notification. The company notifies the CER of the upcoming application (i.e., using the form included in Appendix B of this document). This notification will be provided to the CER at least six months in advance of certificate applications, and at least two months in advance of pipeline exemption order or electricity permit applications. Based on this notification, the CER will: confirm the initial Crown List of potentially affected Indigenous communities; provide initial feedback on whether all potentially affected persons and communities have been identified by the company; and determine the extent, scope and need of any CER-led engagement.
- Step 6 The company or any potentially affected person or community may request the CER's Alternative Dispute Resolution (ADR) services. The requests for ADR services can be made at any time and can occur in parallel to other processes.
- Step 7 Project application. The company submits an application to the CER, which includes the information required by the relevant filing manual, any interim guidance or the On-line Application System which references requirements from the *Filing Manual*. The CER will confirm the final Crown List of potentially affected Indigenous communities when the application is filed.
- Step 8 The company notifies potentially affected persons and communities that the application has been filed with the CER immediately upon submitting an application for a project. In its notification, the company will indicate that people can raise any outstanding project-related concerns with the CER.

### **3. CER Expectations for the Early Engagement Phase**

Detailed guidance regarding the steps defined in section 2 above, follows.

#### **STEP 1 – Identify potentially affected persons and communities**

To enable successful early engagement it is critical that all potentially impacted persons and communities are identified as early as possible. For projects that are in close proximity to existing energy infrastructure, companies can rely on their ongoing public awareness programs for a list of directly affected persons and communities. The following guidance is provided to help identify those persons that may be affected by activities within the scope of the proposed project.

### ***Indigenous Peoples***

To identify which Indigenous communities may have asserted or established rights and/or interests in the project area or may be affected by a proposed project, the CER completes a traditional territory analysis. This analysis incorporates information provided by companies about their projects in order to identify traditional territories of Indigenous communities that may be intersected by a project. The CER relies on publicly available information on the traditional territory asserted by Indigenous communities, including information from previous projects or otherwise that was submitted directly to the regulator, when identifying Indigenous communities that may be affected.

Indigenous communities potentially affected by the project can be identified by:

- requesting, at any time, a preliminary list of potentially impacted Indigenous communities from the CER;
- reviewing the initial Crown List of potentially affected Indigenous communities, which will be provided by the CER in response to a company's notification to the CER as outlined in Step 5;
- reviewing the final Crown List of potentially affected Indigenous communities, which will be provided by the CER during the application assessment process;
- considering the location of Indian reserve lands, Métis or other Indigenous populations, and the traditional territory that may be claimed by one or more Indigenous communities;
- contacting regional Indigenous organizations or government agencies familiar with local Indigenous communities;
- consulting the Government of Canada's Aboriginal and Treaty Rights Information System; and
- taking into consideration past experience working in the area.

As defined in the Filing Manuals, traditional territory is:

*An area where an Indigenous community has claimed or asserted the right to use the land for traditional purposes such as hunting, fishing, trapping, gathering or spiritual activities. One or more Indigenous communities may claim the same lands as their traditional territory.*

### ***Persons with an Interest in Lands Affected by the Project***

The CER expects companies to identify and engage with individuals and communities who have rights and interests in lands affected by a proposed project. These rights and interests could be affected by:

- the company's existing right of way(s) utilized for the project;
- the acquisition or lease of lands;
- temporary workspaces and areas, whether adjacent to or accessed;
- project crossings of third party infrastructure;

- registered and unregistered rights to the lands; and
- operation of the prescribed area.

### ***Persons Potentially Affected by the Project***

The CER expects companies to engage with local residents, land users, and other persons that may be potentially affected by the proposed project. For example:

- any person who could be impacted by nuisance factors (noise, dust, traffic, etc.) related to the construction and operation of the proposed facility;
- any users of registered or recognized hunting, trapping or guiding areas and commercial and sport fishing areas;
- any users of recreation and park areas (including local and provincial or territorial parks and recognized scenic areas); and
- any person who resides in the emergency planning zone.

### ***Government Authorities***

The CER expects companies to ensure the appropriate government authorities (local, regional, provincial and federal) are included in the engagement activities. In some cases, regulatory approval or permits from another government authorities may be required. Contact that authority to determine their information requirements.

The CER expects companies to obtain all regulatory approvals or permits needed for a project. It is the company's responsibility to determine what permits or approvals are required and to plan their project sequencing and scheduling accordingly.

Appendix C, while not exhaustive, identifies government authorities that might need to be contacted for certain projects. The list is intended for assistance and guidance only – companies are responsible for obtaining all necessary approvals for any project.

### **STEP 2 – Design Project-Specific Engagement Activities**

The CER expects companies to consider engagement activities for all projects. Depending on the project scope, and relying on their Engagement Program, a company will determine whether that means carrying out extensive engagement activities, or a simple engagement activity such as notifying a single landowner, or not undertaking any engagement activities at all. Companies must justify the extent of engagement carried out for each project.

In designing engagement activities, companies should be familiar with Chapter 3.4 of the *Filing Manual* and Chapter 5 of the *Electricity Filing Manual* to understand the information regarding engagement that will be required when the application is submitted to the CER.

There are opportunities available in the early engagement phase for companies to adopt a more collaborative approach. This may include, for example, involving potentially impacted persons and communities in field studies and site visits, or in scoping environmental and socio-economic assessments to identify community-appropriate valued components.

When relevant, companies are also encouraged to consider establishing an engagement agreement with a municipal or regional government regarding pipeline and other energy-related developments that takes into consideration the unique needs of the municipality or regional government.

When designing project-specific engagement activities, companies should consider that the CER expects engagement activities will be conducted in a manner that facilitates the involvement of all relevant diverse groups of people, including groups identified by gender, as identified through application of gender-based analysis plus (GBA+), as generally described in the CER Draft Interim Filing Guidance for GBA+.

Additional guidance is included below about designing engagement activities for Indigenous peoples.

### ***Design Factors***

Consider the following factors, where appropriate, in the design of engagement activities:

- the nature, magnitude and location of the project;
- the potential environmental and socio-economic effects of the project;
- effects of the project on navigation and navigation safety;
- potential broad impacts of the project that may extend beyond the project boundaries (e.g., noise and air emissions);
- all registered and non-registered interests held in the lands that may be affected by the project, which may include individuals or organizations identified through the engagement process;
- the specific or distinct needs of various potentially affected persons and communities;
- the location of Indian reserve lands, Métis settlements and traditional territories;
- existing local community concerns or sensitive issues that may be exacerbated by the project;
- the potential for malfunctions or accidents and risk associated with the project as it relates to emergency management;
- the availability of emergency services;
- the compatibility of the project with current land use and zoning;
- the proximity of the project to urban centres and related infrastructure;
- different project routing, design and construction alternatives, and their potential impacts on persons and communities; and
- any other relevant factors not included in this list.

The CER expects companies to consider the distinct language needs of the potentially affected persons and/or communities and include a description of this consideration in their application. Further to section 41 of the *Official Languages Act*, the CER is also committed to fostering the full recognition and use of both English and French in Canadian society. The CER recognizes the importance of considering official languages when developing and implementing an engagement program, to result in effective communication with potentially affected persons in the official language of their choice.

### ***Engagement Methods***

Communicate the project information in a format and manner that is appropriate to the audience. Determine the means of communicating project information in conjunction with the potentially affected persons or communities, if possible.

Engagement methods may include but not be limited to:

- project brochures, either mailed or hand delivered;
- periodic newsletters;
- advertisements in local newspapers;
- radio spots;
- a project web page;
- telephone calls;
- open house meetings;
- project questionnaires;
- facility tours;
- on-site meetings;
- personal visits; or
- workshops.

### ***Designing Engagement Activities for Indigenous Peoples***

When considering project-specific engagement activities, companies are expected to design and effectively implement those activities so that they can seek to understand and address the interests and concerns of potentially impacted Indigenous communities. When engaging with potentially impacted Indigenous communities, companies should specifically seek to understand the rights of Indigenous peoples as they are asserted by the rights-holders.

Companies should review the relevant Filing Manual and should engage with potentially impacted Indigenous communities, as soon as is practical in the planning and design phase of a project, in order to allow adequate time to discuss and understand the interests and concerns of each community. This type of early engagement should also allow companies to discuss and understand the practices and assertions related to the rights of each potentially impacted Indigenous community.

Companies should work directly with Indigenous peoples to seek to understand and document their specific interests and concerns, as well as to understand and document values, practices, activities, customs or traditions that are connected to and are undertaken in relation to their rights as identified.

When working with Indigenous communities, companies should design their engagement activities in such a way that will allow meaningful opportunities to understand and discuss interests and concerns identified, and how general or specific rights are being exercised. The source of Indigenous rights identified could be, for example, Treaties, legislation, or as

established through case law. Identifying the source of the Indigenous rights asserted, claimed or established will allow for a better understanding of the right and by extension, how the ability to exercise the right may be impacted by the project. These discussions should critically inform details provided within a project application, including information pertaining to matters such as:

- the quality, quantity or distribution of resources involved in interests identified, or required for the exercise of the right (for example, any preferred wildlife or plant species utilized, the cultural, ceremonial or nutritional uses or importance of resources, and perception of quality, cultural connections to a particular species);
- access to the resources used or required in relation to the interests identified or to the exercise of the right (for example, physical access or travel ways to access culturally important or harvesting locations, and distance from communities of residence);
- timing and seasonality in relation to the interests identified, or for the exercise of rights, including how often the Indigenous right may be practiced or exercised;
- locations or areas of cultural importance where interests are identified or Indigenous rights are exercised.

Companies should also work with Indigenous communities to ascertain whether any Indigenous knowledge is being provided in confidence, and if so, ensure that confidential Indigenous knowledge can be appropriately protected from unauthorized disclosure. Companies should strive to reach agreements or utilize existing community protocols with respect to Indigenous knowledge.

When designing project-specific engagement activities, companies should also discuss with potentially affected Indigenous communities the measures that would support, improve or provide benefit to the exercise of Indigenous rights. Where such measures are proposed, or are recommended by potentially affected Indigenous communities, companies should provide meaningful opportunities for communities to consider the measures that are proposed and to respond to any measures and mitigation. Companies should also provide clear and timely feedback to any recommendations made by potentially affected Indigenous communities. The aim of engagement about mitigation and accommodation measures should be to seek to align interests and to address concerns or potential project effects to the extent possible.

### ***Designing Engagement Activities for Emergency Management***

Sections 32 to 35 of the OPR describe requirements for an Emergency Management Program which apply to a company's operations. Effective emergency response planning requires liaison and engagement with federal, provincial, and municipal governments, Indigenous communities, and associated first responders. The CER assesses a company's Emergency Management Program throughout operations, through its compliance verification activities.

For a proposed project, it may also be appropriate to initiate engagement during the application process with those agencies and organizations that may be involved in an emergency response. The need for and depth of engagement with these agencies and organizations should be informed by:

- the assessment of potential risks associated with the project;
- the level of public concern regarding emergency management planning and emergency response associated with the project; and
- the extent to which an applicant's emergency response plans would interact with, and rely on those of first responders and other agencies for initial or ongoing response activities.

Agencies engaged with may include but would not be limited to:

- police;
- fire departments, including volunteer fire departments;
- emergency medical services;
- provincial emergency management organizations;
- provincial regulators and ministries of environment;
- federal departments;
- municipalities;
- Indigenous communities;
- waste management companies; and
- spill co-operatives.

The goal of the engagement is to ensure that those agencies and organizations that may be involved in an emergency response related to a proposed project have been adequately engaged and that any concerns raised have been considered and addressed as appropriate. Companies are reminded to refer to guidance throughout Chapter 3.4 of the *Filing Manual* and Chapter 5 of the *Electricity Filing Manual* when designing and implementing engagement activities related to emergency management including with respect to how the company considered the results of its engagement.

***FYI – Reminder: Engagement Regarding Emergency Management***

Sections 33 to 35 of the OPR outline the requirements applicable to a company operating a pipeline for establishing and maintaining liaison with agencies that may be involved in an emergency and for developing a continuing education program for appropriate organizations and agencies.

Additional information on the CER's expectations regarding liaison and engagement activities as they pertain to a company's Emergency Management Program can be found on the CER's website and the OPR Guidance Notes.

***Justification for Not Undertaking Engagement Activities***

For the majority of projects that involve the construction or modification of facilities that require an application under sections 182, 214, 248, 262, or 298 of the *Canadian Energy Regulator Act*, the CER expects companies to undertake project-specific engagement activities. However, there may occasionally be projects where engagement is not required. The following sections provide guidance regarding situations where engagement activities may not be required:

### *Equivalent Engagement Activities*

Engagement has already been undertaken as required by another agency or department and the company can demonstrate those activities are relevant to the current project and is equivalent to the CER's guidance and requirements.

### *No or Negligible Impacts*

Companies will be conducting environmental and socio-economic assessments of the project in accordance with the applicable requirements of the *Canadian Energy Regulator Act* and the Filing Manuals.

Through their assessment process, companies will determine the potential adverse effects of the project. If the project's potential environmental and socio-economic effects are negligible, engagement activities might be unnecessary. A project with negligible effects might exist where many or all of the following conditions are met:

- the proposed project is of a small scale and is localized;
- all construction is to occur on previously disturbed land;
- there is no potential for an impact on navigation;
- the land acquisition process is complete and landowner concerns have been addressed, or the project work is confined to company owned or leased land;
- there are no residents near the proposed project;
- no other land uses or waterway uses or interests would be affected;
- there is no potential for traditional use activities to be affected by the project;
- there is no potential for cumulative environmental effects;
- there would be negligible environmental effects associated with construction and operation of the project;
- there is no increase in the storage or disposal of toxic substances;
- there is no increase in noise emissions;
- there is no increased emissions in air contaminants; and
- there is no potential for local nuisance, including potential for increased dust or traffic.

Because the identification of potential impacts may depend on engagement with those people potentially affected, and because an impact assessment may not yet be completed, companies should generally be conservative when contemplating the possibility that engagement may not be necessary. When and where recent previous project assessments or engagements are relied on, relevant details of these should be cited in the Project Notification and the application to the CER.

### *Facilities within Company Owned or Leased Lands*

If the application is for a facility within company owned or leased land, engagement activities might be unnecessary. This may be the case where the facilities application relates to work contained within the confines of land the applicant owns or leases (as distinct from land upon which the applicant holds an easement only), except where those facilities or activities:

- relate to an increase in the storage or disposal of toxic substances;
- could result in impacts to traditional land and resource use;
- could result in increased noise emissions;
- could result in increased emissions of air contaminants; or
- could result in local nuisance, including the potential for increased dust or traffic.

### **STEP 3 – Provide Information Package to Potentially Affected Persons and Communities**

Information packages must be given by the company to potentially affected persons and communities to provide them with necessary information, such as, details of the project, an explanation how the persons identified may be affected, and a description of how these people can engage with the company and the CER. Company information packages must be provided with enough time to allow for meaningful engagement to occur prior to the application being filed with the CER. Depending on the specific or distinct needs of the potentially affected persons and communities, company information packages could be delivered in one comprehensive package at a single point in time, or in a series of smaller packages delivered over an extended period of time. The contents of a company's information package to potentially affected persons and communities should include:

- the company's intention to apply to the CER for approval of its project;
- the proposed timing of filing the application with the CER;
- the proposed timing and duration of construction;
- an overview of the project, including:
  - a complete list and thorough description of the project components and activities. This would include any components or activities required for the project to proceed (e.g., construction camps, means of access including temporary and permanent bridges, electrical grid connections, marine terminals and loading facilities); together with a map or maps at appropriate scale that show all major components of the project, including: the proposed location of the project with starting and ending points, and main components of the project such as pump and compressor stations;
  - the objectives and the potential benefits of the project;
  - the proposed routing of the project, and proposed study corridor;
  - the location and size of any temporary workspace required; and
  - the location of any major towns, roads, water bodies or other landmarks in the area of the project;
- a discussion of project design elements and extent to which those design elements may be adjusted, including descriptions of:
  - local or regional environmental features (biophysical or human environment) that constrain or limit the degree to which project facility components and design can be modified;
  - project components for which there may be flexibility including in deciding where to locate, when to construct, or how to design the project and the degree to which there is flexibility;
  - project components for which there is little to no flexibility and an explanation as to why;

- the potential environmental and socio-economic effects of the project and how those effects will be addressed;
  - with respect to Indigenous peoples, a description of the potential effects of the project on the current use of lands and resources for traditional purposes, human health, and heritage resources;
- how public safety will be addressed;
- the emergency response information for agencies and organizations that may be involved in an emergency response and other stakeholders or when that information is likely to be available;
- how comments or concerns raised by potentially affected persons or communities will be addressed throughout the engagement process;
- how the company will provide transparency in the monitoring and performance of conditions and commitments (e.g., reporting, line walks, ride-alongs, site visits);
- describe the best available technologies and practices that will be used in the construction, operation, and abandonment of the project;
- how potentially affected persons can participate further in the engagement process;
- description of the company's dispute resolution (or landowner complaint) process;
- company contact information; and
- the appropriate CER brochures and publications.

#### **STEP 4 – Ongoing Engagement Activities**

Through the course of the early engagement phase, companies may identify other stakeholders that should be notified or engaged or additional discussion areas. Any developments or revisions in the early engagement phase should be documented, and addressed to the extent possible, for eventual submission to the CER in the application.

Through the early engagement phase, the CER expects companies to address concerns, to the extent possible, before they become complaints; in that, the CER expects a company to:

- seek to understand the full nature of concerns expressed by potentially impacted persons or communities;
- consider the feasibility of any mitigation proposed by persons or communities to address those concerns;
- respond to concerns; and
- work with persons or communities to jointly resolve concerns.

The CER recognizes that engagement is an iterative process that will typically involve multiple conversations with different people. At some point in the early engagement phase, depending on the particular project, companies will likely have to get input on general route selection. For example, the CER expects companies to be in a position to clearly demonstrate: 1) how the proposed project is the most appropriate option to meet the needs that would be satisfied by the project while serving the public interest; and, 2) how the input and concerns they receive from potentially impacted persons, including potentially affected landowners and Indigenous

communities, have influenced the design (including general route selection), construction or operation of their project.

### ***Pre-Application Meetings***

The CER is committed to ensuring that companies are provided with opportunities to fully understand the CER's processes. Pre-application meetings between companies and CER staff are one of the options to promote a better understanding of the CER's application process and regulatory requirements. While CER staff cannot provide the company with any specific guidance on the proposed project or any substantive issues, pre-application meetings give everyone the opportunity to:

- share process information and establish contacts;
- discuss filing requirements; and
- identify additional resources for information.

To assist companies in determining whether a pre-application meeting would be beneficial, the CER has posted on its website "Pre-Application Meeting Guidance Notes"<sup>19</sup>, which include a company checklist. These Guidance Notes provide details on the objectives of pre-application meetings, discuss how to request a meeting and identify what companies can expect during a pre-application meeting.

## **STEP 5 – File Project Notification with the CER**

### ***Filing Requirement***

The company shall notify the CER of an upcoming application, at least six months in advance of certificate applications, and at least two months in advance of pipeline exemption order or electricity permit applications.

### ***Guidance***

Appendix B provides the Project Notification Form that a company should complete and submit to the CER for an upcoming application. The Project Notification Form includes a list of information that must be included by the company when notifying the CER. The level of detail provided in the Project Notification Form should correspond to the size, scope, nature and complexity of the proposed project, and to the hazards and risks associated with it.

The CER will use the information provided in the Project Notification Form to:

- confirm the initial Crown List of potentially affected Indigenous communities for the project;
- confirm whether all potentially affected persons and communities have been identified;

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<sup>19</sup> <http://www.neb-one.gc.ca/bts/ctrg/gnnb/prpplctnmtng/index-eng.html>

- ensure potentially affected persons and communities are aware of the opportunities for CER-led ADR services;
- determine the extent, scope and need of any CER-led public engagement activities;
- determine the extent, scope and need of any CER-led Crown Consultation activities; and
- determine the extent to which, participant funding will be made available for CER-led early engagement activities.

The CER strongly encourages companies to request a preliminary traditional territory analysis before this step in the early engagement process if there is any uncertainty about the potentially affected Indigenous communities (e.g., greenfield projects, companies that do not have existing relationships with Indigenous communities in the area of the project, or companies that are not familiar with building linear energy infrastructure). Given the possibility of changes to a project between when the company submits a project notification to the CER and when the company submits a project application to the CER, the CER will confirm the final Crown List when the application is filed.

Based on the information in the Project Notification Form, the CER will make decisions about whether any CER-led engagement activities are needed with the public and Indigenous communities. Typically, the CER will design and implement engagement activities for certificate applications. Issues that are identified during CER-led engagement activities will be provided to the company and posted on the Regulator's website within the applicable 2-month or 6-month period. The input may also inform the design of the CER's hearing process.

The CER will inform companies about the initial Crown list of potentially affected Indigenous communities and its decision whether to conduct any CER-led engagement activities by issuing and publicly posting a "Receipt of Project Notification".

#### **STEP 6 - Request CER ADR services as required**

The CER encourages open and respectful discussion between companies and people that are affected by CER-regulated proposed projects and facilities. Through its ADR services, the CER can help companies and potentially affected persons work through disputes and find practical solutions to issues of disagreement during the early engagement phase and at any stage of the hearing process. The Commission may take the results of the ADR process into account when making a decision, order or recommendation and may refer to them in the decision, order or recommendation.

ADR is a collection of processes and techniques that can be used to resolve issues as an addition to a traditional hearing process. ADR aims to be collaborative and respectful of everyone's point of view. The CER promotes collaborative outcomes through ADR, in the use of facilitated meetings and mediations with ADR specialists.

ADR can be requested at any time during the early engagement phase and the hearing process; experience has shown successful outcomes can be achieved the earlier the ADR services are accessed. The CER can utilize internal and external ADR specialists who have accredited certification in negotiation, facilitation and mediation to assist in evaluating options for resolving

issues. The CER ADR specialists work with potentially affected persons and the company to design and plan for a process to assist in reaching a mutually satisfactory outcome on unresolved issues.

Some of the benefits of ADR include:

- flexible and supports respectful discussions;
- mutually acceptable outcomes that can be practical and meet specific needs;
- settlements are decided by the participants and are not imposed by the CER; and
- ADR can occur in parallel to, and complement, the hearing process.

Companies and potentially affected persons and communities are encouraged to use the CER's ADR services. ADR is voluntary and its results are not binding. If all the participants to a dispute request then the CER must provide ADR. The results of ADR are not made public, unless both parties agree, but may be taken into account by the CER when making a decision on a project.

### **STEP 7 – File Project Application with the CER**

The company is to file the application to the CER. Guidance on the application submission process is provided here: <http://www.neb-one.gc.ca/pplctnflng/sbmt/nbpr-eng.html>.

Guidance on information to include in an application for a pipeline project is found in the *Filing Manual* here: <https://www.neb-one.gc.ca/bts/ctrg/gnnb/flngmnl/index-eng.html>. Filing requirements regarding engagement on a proposed project is specifically covered in Chapter 3.4 of the *Filing Manual*, which can be found here: [https://www.neb-one.gc.ca/bts/ctrg/gnnb/flngmnl/fmch3-eng.html#s3\\_4](https://www.neb-one.gc.ca/bts/ctrg/gnnb/flngmnl/fmch3-eng.html#s3_4).

Guidance on information to include in an application for a powerline is found in the *Electricity Filing Manual* here: <https://www.neb-one.gc.ca/bts/ctrg/gnnb/lctrctpwrlns/lctrctflngmnl/index-eng.html>.

Filing requirements regarding engagement on a proposed project is specifically covered in Chapter 5 of the *Electricity Filing Manual*, which can be found here: <https://www.neb-one.gc.ca/bts/ctrg/gnnb/lctrctpwrlns/lctrctflngmnl/lfmch5-eng.html>.

### **STEP 8 – Inform Potentially Affected Persons and Communities of Project Application (for Non-designated Applications for an Order or Permit)**

After submitting an application for an order under section 214, a permit under section 248, or an authorization under section 298, a company is expected to immediately notify potentially affected persons and communities that the application has been filed with the CER. The notice should indicate that people can raise any project-related concerns with the CER. The CER encourages people to submit any concerns about the project as soon as possible and preferably within 14 days after they receive notice of the application.

Regarding this step, companies are not expected to proactively notify potentially affected persons and communities for applications for a certificate under sections 182 or 262 of the *Canadian Energy Regulator Act*. In these situations, the CER will hold public hearings to consider the applications, and the CER will specify the form of notice (for example, a CER hearing order, a CER notice of application) that companies must provide to all potentially affected persons and communities.

#### **4. Summary**

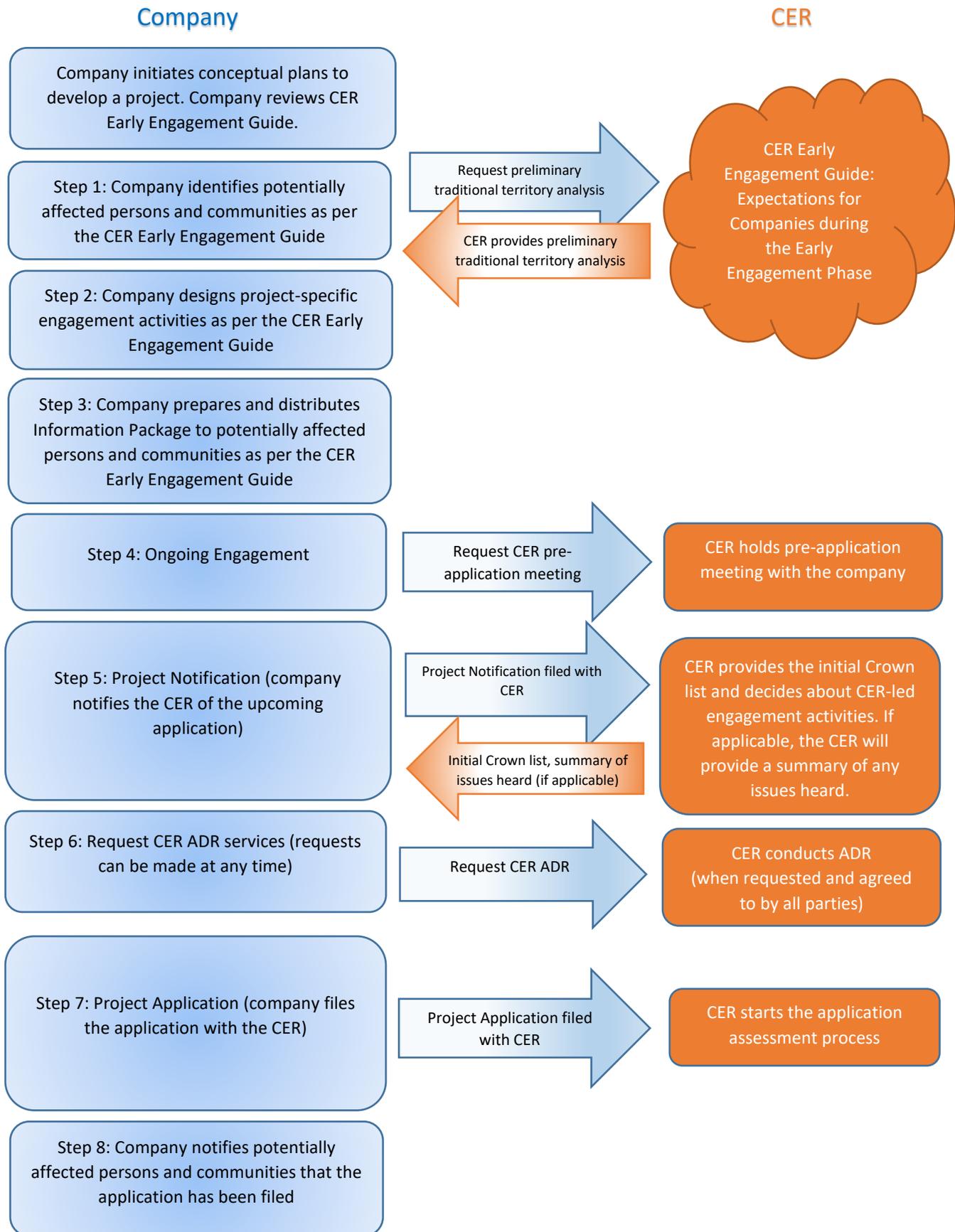
The CER's regulatory oversight typically spans the entire life of the regulated infrastructure, including a pipeline or a powerline, subject only to any authorities which cede to another regulatory body (i.e., a provincial body). Early engagement is just the first of many processes designed to support participation in CER-regulated infrastructure projects. Early engagement is followed by the application assessment process, which in turn is followed by open and transparent compliance processes during the construction and operation phases of approved facilities.

After the early engagement phase, the CER expects companies to continue to conduct effective engagement during the application phase. Chapter 3.4 of the *Filing Manual* and Chapter 5 of the *Electricity Filing Manual* provide guidance about the regulator's expectations during this phase. The CER also expects companies to continue to conduct effective engagement during construction and operation; the CER's expectations related to operations and maintenance activities on pipelines can be found on the CER's website in the "Operations and Maintenance Activities on Pipelines Regulated Under the National Energy Board Act: Requirements and Guidance Notes"<sup>20</sup>.

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<sup>20</sup> <http://www.neb-one.gc.ca/bts/ctrg/gnnb/nshrpln/prtnmntnncctvt/prtnmntnncctvtgn-eng.html>

## Appendix A: Overview of the Early Engagement Phase



## **Appendix B: Project Notification Form**

The company shall file a Project Notification Form to the CER of an upcoming application, at least six months in advance of certificate applications, and at least two months in advance of pipeline exemption order or electricity permit applications. The Project Notification Form should include the following information:

- company contact information;
- the proposed timing of filing the application with the CER;
- the proposed location, timing and duration of construction;
- a map of the proposed project;
- a list of all potentially affected persons and communities, including Indigenous communities;
- a list of potential impacts related to the proposed project as they were communicated to potentially affected persons and communities;
- a description of issues raised by potentially affected persons and communities about the proposed project and the status of resolution of those issues;
- a description of the land acquisition process; and
- a description of the route selection methodology and location of facilities and how early engagement with the public and Indigenous communities has influenced this.

**Appendix C: Other Potential Federal Contacts (Government Authorities)**

<b>Project Considerations</b>	<b>Contact</b>
Does the project occur in a National Park or National Historic Site or is it likely to affect a National Park or National Historic Site?	Parks Canada
Is the project likely to take place on, involve dredge or fill operations in, draw water from or discharge water to a historic canal administered by and operated by Parks Canada?	Parks Canada Public Services and Procurement Canada
Is the project likely to affect Indian reserve lands?	Indigenous and Northern Affairs Canada
Will the project occur on lands in the Yukon or the Northwest Territories that are under the control, management and administration of Indigenous and Northern Affairs Canada and require the issuance of a Class A or Class B permit?	Indigenous and Northern Affairs Canada
Is the project likely to result in international air pollution?	Environment and Climate Change Canada
Is the project likely to result in the deposition of materials into the marine environment?	Environment and Climate Change Canada
Does the project occur in a wildlife area as defined in the Wildlife Area Regulations?	Environment and Climate Change Canada
Could the project affect wildlife species at risk or their critical habitat or the residences of individuals of those species?	Environment and Climate Change Canada Fisheries and Oceans Canada Parks Canada
Is the project likely to result in: <ul style="list-style-type: none"> <li>• killing, capturing, taking or possessing a migratory bird or its nest or eggs;</li> <li>• collecting eiderdown or depositing oils or other harmful substance in areas frequented by migratory birds;</li> </ul>	Environment and Climate Change Canada

<ul style="list-style-type: none"> <li>• an effect on migratory bird habitat within a bird sanctuary; or</li> <li>• the release of a species of bird not indigenous to Canada?</li> </ul>	
<p>Will the project affect the natural flow of an international river (i.e., water flowing from any place in Canada to any place outside Canada) or affect the actual or potential use of that river outside Canada?</p>	<p>Environment and Climate Change  Canada</p>
<p>Is the project likely to result in the release of a deleterious substance?</p>	<p>Environment and Climate Change  Canada</p>
<p>Is the project likely to affect wetland function?</p>	<p>Environment and Climate Change  Canada  Parks Canada</p>
<p>Is the project likely to affect the operation of a railway company or property owned or leased by a railway company, or require the installation of telephone, electricity, telegraph or other wire services for a railway facility?</p>	<p>Canadian Transportation Agency  Transport Canada if Railway Safety Act is involved</p>
<p>Will the project result in cutting timber or constructing roads in a Federal Forest Experimental Area?</p>	<p>Natural Resources Canada</p>
<p>Does the project involve producing or holding explosives in a magazine?</p>	<p>Natural Resources Canada</p>
<p>Does the project involve replacing or repairing a bridge?</p>	<p>Public Works and Government  Services and Procurement Canada</p>