



Filing Manual – Guide ~~O – Review, Rehearing or Variance~~ N – Applications ~~(CER Act ss. 69, 190)~~ to Review, Rescind or Rehear

~~An applicant may apply~~ The Commission is authorized to review, vary, or rescind any decision or order it makes, or re-hear any application before deciding it, under section 69 of the CER Act.

~~This Guide addresses filing requirements for a review or rehearing of a previous Commission decision or order, or section 190 to vary a certificate, licence applications seeking to overturn and/or permit. Part III of the Rules sets out the procedure to be followed for a rescind a Commission decision or order in its entirety through a review or rehearing. It should be used when a reversal to a Commission decision or order is requested.~~

~~Where the request is for a specific variance, such that a Commission decision or order remains the same but a specific detail requires changing (e.g., timing relief or a change to the project specifications), please see Guide O.~~

~~Unlike many other types of applications, there are no service standards or time limits associated with applications to review, rescind, or rehear CER decisions.~~

Goal

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

Filing Requirements

~~Applications for~~ seeking to overturn and/or rescind a Commission decision or order through a review or rehearing must meet the requirements set out in Part III of the Rules, which may be summarized as follows:

1. The application must be in writing, signed by the applicant ~~or~~ (the applicant's person requesting the review or rehearing) or the applicant's authorized representative, filed with the CER and served on all parties to the original proceeding that gave rise to the decision or order in respect of which the review or rehearing is sought.
2. The application must contain:
 - a. a concise statement of the facts;
 - b. the grounds that the applicant considers sufficient to raise a doubt as to the correctness of the decision or order, or to establish the requirement for rehearing, including:

- ~~▪ in the case of a review, to raise a doubt as to the correctness of the decision or order, or~~
- ~~▪ in the case of a rehearing, to establish the requirement for rehearing, including:~~
 - i. any error of law or jurisdiction;
 - ii. changed circumstances or new facts that have arisen since the close ~~or of~~ the original proceeding; or
 - iii. facts that were not placed in evidence in the original proceeding and that were then not discoverable by reasonable diligence;
- c. the nature of the prejudice or damage that has resulted or will result from the decision or order; and
- d. the nature of the relief sought.

~~Where the application is to vary an order, certificate, licence or permit, include the reason the variation is required and all information necessary to support the change proposed, including the information required by the relevant Filing Manual Guide.~~

Guidance

~~In Part III of the Rules, and in this guidance, a reference to an application for review includes an application to vary or rescind any decision or order of the Commission can change the requirement if the circumstances warrant. Where there are concerns with service, include an explanation of the concerns.~~

~~Reviews or Rehearings~~

Guidance

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

Part III of the Commission's Rules¹ specifies the requirements for applications for review or rehearing. Section 45 of the Rules establishes a discretionary two-step process for review or rehearing applications. ~~The:~~²

- In the first step, the Commission ~~first~~ determines whether the decision or order should be reviewed or the application reheard. In order to find that a review or rehearing is required, the Commission must be satisfied that ~~the~~ an applicant has ~~raised~~ met its onus to raise a doubt as to the correctness of the decision or order under review or has demonstrated that a rehearing is required. Before making its determination, the

¹ The National Energy Board Rules of Practice and Procedure, 1995, SOR/95-208 (Rules) outlines the requirements for Commission hearings.

² In some instances the Commission may decide to combine step 1 and step 2 of a review or rehearing application.

Commission may, but is not required to, give interested parties the opportunity to file submissions. ~~if, and~~

- In the second step, which follows if the first test is ~~met~~satisfied, the Commission considers the review or rehearing application on its merits. In doing so, the Commission may establish a process to govern the conduct of the review or rehearing.

Please note that reviews and rehearings are not meant to be opportunities to re-argue the same points previously raised or to provide new arguments that could have been raised originally, but were not.

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

Variance Applications

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

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

~~In each case, the applicant must satisfy the filing requirements of the relevant Filing Manual Guide. For example, an application seeking to vary a certificate of public convenience and necessity to reflect a design change must include all information required under to support the proposed change. The applicant must examine the Guide pursuant to which the original instrument was issued to determine specific filing requirements.~~

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

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

~~Where the company that is authorized under the order or certificate to operate the pipeline has not changed (e.g., in the event of a simple corporate name change), a variance is not required. However, for administrative purposes, the CER strongly encourages companies to notify the CER and request an amendment to their order or certificate in the event of a corporate name~~

change. At a minimum, and if not done earlier, the changes should be noted when filing certain annual compliance information each January.³

Further, in the event of a variance or corporate name change, signage on facilities and communication with landowners must be updated within 30 days to facilitate communication and safety reporting (see OPR, s. 36(f)).

Next Steps...

File the completed application. Applicants are encouraged to include the completed relevant checklists from—

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³ MH-001-2013 Reasons for Decision Set Aside and Collection Mechanisms May 2014, Appendices XV and XVI

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