



Early Engagement Guide





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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 *Early Engagement Guide* is to provide companies with the Canada Energy Regulator's (CER) expectations, including filing requirements and guidance, during the early engagement phase for non-designated projects. Non-designated projects are those physical 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 physical project until the company submits an application for a non-designated project to the CER. In particular, the *Early Engagement Guide* covers proposed projects that involve constructing or modifying facilities that require an application under the *Canadian Energy Regulator Act*. Engagement activities should be appropriate for the nature of the project, and the filing requirements associated with company notifications to the CER (i.e., Step 4 below) are only applicable for certain projects.¹

The Commission 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);
- > 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 *National Energy Board Onshore Pipeline Regulations* (OPR). Additional guidance is provided in the *Draft Expectations for Public Involvement Programs* [Filing A22289], which can be found on the CER's website, www.cer-rec.gc.ca, under Applications and Filings > View Regulatory Documents.

¹ For projects that also trigger a federal review under the *Impact Assessment Act*, further guidance is available on the Impact Assessment Agency of Canada's website: <https://www.canada.ca/en/impact-assessment-agency.html>.



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 guide.

- Step 1 The company identifies potentially affected persons and communities. The company should request a preliminary traditional territory analysis from the CER to confirm the 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 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 *Early Engagement Guide* lists the minimum information required in the information package. The company continues engagement activities with potentially affected persons and communities.
- Step 4 Project notification. The company notifies the CER of certain upcoming applications (i.e., using the project notification requirements described in Table 1). Specifically, this notification will be provided to the CER at least four months in advance of certificate applications, and at least two months in advance of pipeline exemption order applications, unless otherwise authorized by the CER. In response to this notification, the CER will: provide a receipt of project notification to the company; confirm the initial 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. [Note: notification to the CER is only required for projects that require an application under the following sections of the *Canadian Energy Regulator Act*: section 183 (applications for pipeline certificates), section 214 (applications for pipeline orders), section 262 (applications for power line certificates) and section 298 (applications for offshore renewable energy projects and offshore power lines)].
- Step 5 Project application. The company submits an application to the CER, which includes the information required by the relevant filing manual or the On-line Application System which references requirements from the relevant filing manual. The CER will confirm the Crown List of potentially affected Indigenous communities when the application is filed.
- Step 6 The company notifies potentially affected persons and Indigenous peoples that the application has been filed with the CER. In its notification, the company will indicate that people can raise any outstanding project-related concerns with the CER.

Figure 1 is a diagram showing the steps in the early engagement phase.

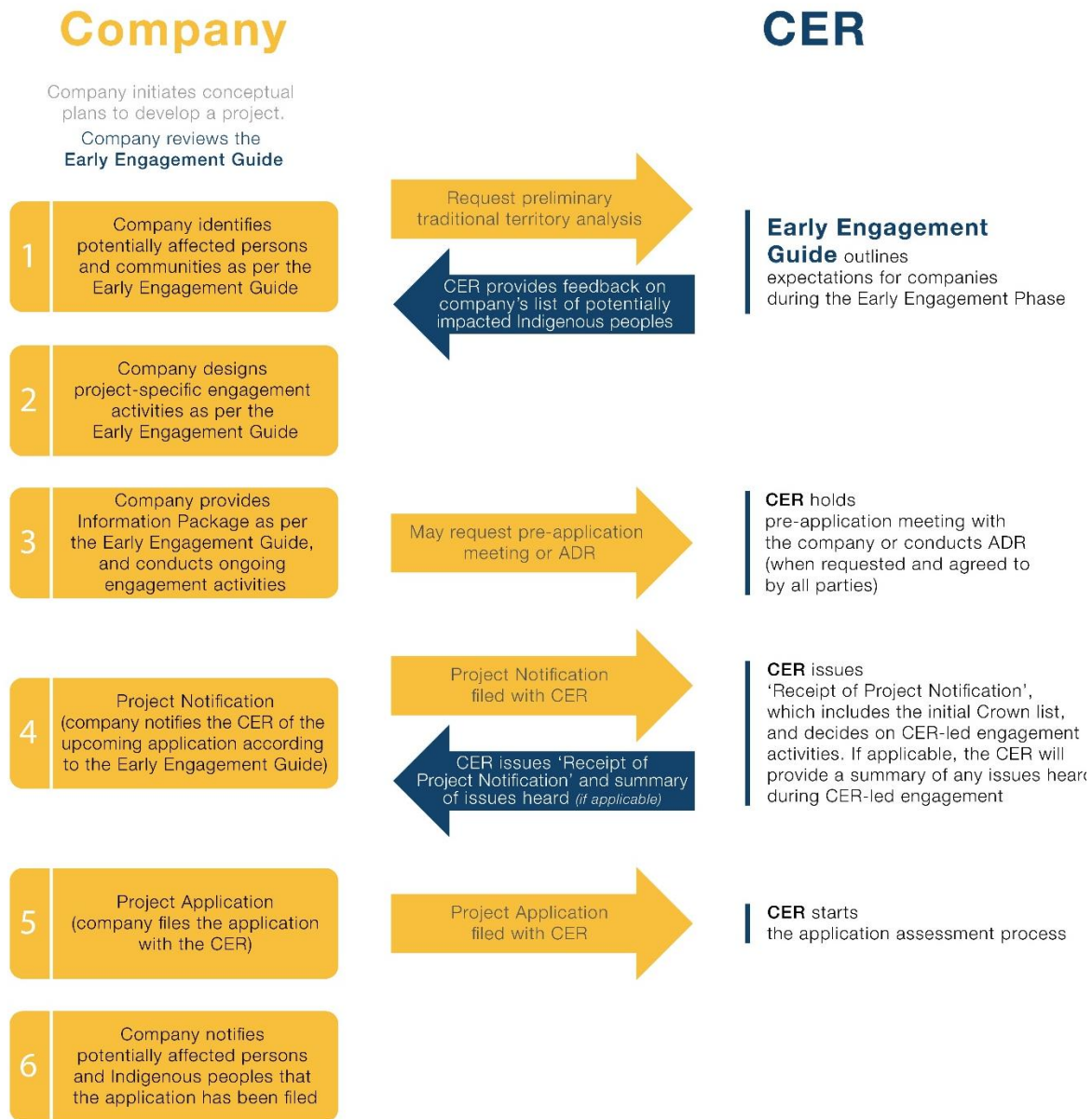


Figure 1: Steps in the early engagement process

3. CER Expectations for the Early Engagement Phase

This section provides more detailed guidance on the steps outlined in Figure 1.

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 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 4;
- > reviewing the 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 settlements, 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 rights of way 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.

Table 3-1 (located in Chapter 3 of the *Filing Manual*), 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 section 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 relevant filing manual.

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 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 section 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.

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 183, 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;

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.



- > 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 and Continue Engagement

INFORMATION PACKAGE FOR 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 in accordance with *Guidance for companies on CER publications* on the CER's website.

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, www.cer-rec.gc.ca, *Pre-Application Meeting Guidance Notes*, 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.

CER ADR (ALTERNATIVE DISPUTE RESOLUTION) SERVICES

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 or a designated officer 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 revolve 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 4 – File Project Notification with the CER

FILING REQUIREMENT

The company shall notify the CER of certain upcoming applications, at least four months in advance of certificate applications, and at least two months in advance of pipeline exemption order applications, unless otherwise authorized by the CER.

The CER does not require companies to file a project notification for electricity permit applications in order to avoid duplicating the provincial permitting process. Similarly, the CER does not require companies to file a project notification for abandonment applications because a company has already established relationships with people that are potentially affected by the project, including landowners, Indigenous communities, municipalities and others.

GUIDANCE

Table 1 provides the project notification requirements that a company should complete and submit to the CER for an upcoming application. The project notification requirements include a list of information that must be included by the company when notifying the CER. The level of detail provided in the project notification should correspond to the size, scope, nature and complexity of the proposed project, and to the hazards and risks associated with it.

Table 1: Project Notification Requirements

The project notification should include the following information:

<input type="checkbox"/>	company contact information;
<input type="checkbox"/>	the proposed timing of filing the application with the CER;
<input type="checkbox"/>	the proposed location, timing and duration of construction;
<input type="checkbox"/>	a summary of the proposed project, including a map of the proposed project, and <ul style="list-style-type: none"> ○ for pipelines, the total length of new pipeline and the number of kilometres of new right of way; ○ for power lines, the voltage, the total length of the power line and the number of kilometres of new right of way; ○ for petroleum and natural gas liquids facilities, the percentage increase to any existing storage capacity and the total storage capacity; ○ for offshore renewable projects, the number of wind turbines;
<input type="checkbox"/>	a list of all potentially affected persons and communities, including Indigenous communities;
<input type="checkbox"/>	a list of potential impacts related to the proposed project as they were communicated to potentially affected persons and communities;
<input type="checkbox"/>	a description of issues raised by potentially affected persons and communities about the proposed project and the status of resolution of those issues;
<input type="checkbox"/>	a description of the land areas, land rights (i.e., the type of land rights proposed to be acquired for the project, the nature and relative proportions of land ownership along the proposed project), and the land acquisition process; and
<input type="checkbox"/>	a description of the route selection methodology and location of facilities and how early engagement with the public and Indigenous communities has influenced this.



The CER will use the information provided in the project notification to:

- > issue a receipt of project notification to the company, which includes the initial list of potentially affected Indigenous communities for the project;
- > confirm whether all potentially affected persons and communities have been identified;
- > 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 (for example, 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 Crown List when the application is filed.

Based on the information in the project notification, 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. The input may also inform the design of the CER's hearing process.

The CER will inform companies about the initial 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 5 – File Project Application with the CER

The company is to file the application to the CER. Guidance on the application submission process is provided on the CER's website: www.cer-rec.gc.ca.

The CER's website includes:

- > the *Filing Manual*, which provides guidance on the information to include in an application for a pipeline project. Section 3.4 includes filing requirements related to engagement.
- > the *Electricity Filing Manual*, which includes guidance on the information to include in an application for a power line. Section 5 includes filing requirements related to engagement.

Step 6 – Inform Potentially Affected Persons and Communities of Project Application (for Non-designated Applications for an Order or Permit)

After submitting an application for a project that involves constructing or modifying facilities that require an application under the *Canadian Energy Regulator Act*, a company is expected to notify, as soon as reasonably possible, 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 proposed project as soon as possible by submitting a statement of concern. Canadians, including landowners and Indigenous Peoples, who have specific concerns about a company's proposed project, can submit a statement of concern within 21 days of the application being filed with the CER. A *statement of concern* template is available on the CER's website, www.cer-rec.gc.ca. All statements of concern will be fully assessed by the Commission and guide the Commission in planning its assessment process.



In addition to this notice from companies, the CER will also provide a notice to potentially affected persons and communities for applications for a certificate under sections 183 or 262 of the *Canadian Energy Regulator Act*. In these situations, the Commission will hold public hearings to consider the applications, and the Commission will specify the form of this additional notice (for example, a Commission hearing order) 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. Section 3.4 of the *Filing Manual* and Chapter 5 of the *Electricity Filing Manual* provide guidance about the regulator's expectations during the application 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, www.cer-rec.gc.ca, under *Acts and Regulations*, and in the *Operations and Maintenance Activities on Pipelines Regulated Under the National Energy Board Act: Requirements and Guidance Notes*.