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**VIA EMAIL**

**Canada Energy Regulator**
**210-517 10 Ave SW,**
**Calgary, Alberta**
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**RE:** ***Public Comment Period on the Canada Energy Regulator ("CER") Filing Manual revised Guide O (Variances and Project Updates) and new Guide N (Review, Rescind, or Rehear); Section 1.5 (Confidential Filing); Section A.3.1 (Supply); and Section A.3.3 (Markets)***

Enbridge has reviewed the proposed updates to the CER Filing Manual documents and provides the following comments:

## General Comment

Considering the CER's strategic priority of Competitiveness and its desire to enhance transparency, predictability and efficiency, Enbridge respectfully requests that the CER consider publishing a service standard or process timeline guidance as part of the CER Filing Manual guide updates. In so doing, the CER will provide proponents with clarity to enable company decisions to be made regarding project schedules while minimizing impacts.

## Guide O (Variances and Project Updates)

Under *Goal, O.1 Changes to the Name of a Holder of a Certificate, License or Permit*
Enbridge recommends the title be changes as follows to include 'Order': "O.1 Changes to the Name of a Holder of a Certificate, License, ~~or~~ Permit or Order"

Under *O.1 Changes to the Name of a Holder of a Certificate, License or Permit, Guidance*:
Enbridge recommends the text be re-written using active voice and modify as follows: "*Where the name of a company that owns the pipeline will change, by way of a corporate name change or change in ownership (for example, in the event of a sale, purchase, transfer or lease of a pipeline, or amalgamation) for which… a variance to a certificate or order under section 190 of the CER Act is required.*"

Under *O.1.2 Filing Requirements for Corporate Name Changes (without a change in ownership, lease, or amalgamation) pursuant to section 181 of the CER Act, Guidance*:
Enbridge recommends the text be modified from "*Where the company that is authorized under the order or certificate to own the pipeline has not changed (e.g., in the event of a mere corporate name change), the Commission expects companies to notify the Commission and request a change to their order or certificate*" to "*Where the ownership of the company that is authorized under the order or certificate has not changed (e.g. in the event of a mere corporate name change), the Commission expects companies to notify it and request a change to the name/holder of the order or certificate.*"

Under *O.1.2 Filing Requirements for Corporate Name Changes (without a change in ownership, lease, or amalgamation) pursuant to section 181 of the CER Act, Guidance*:
Enbridge recommends the text be modified as follows for clarity: "*In either instance, in the event of variances because of a change in ownership or corporate name, signage on facilities and emergency contact information for landowners must be updated within 30 days of the name change …*"

Under *O.1.2.5.*:
"*These documents should be submitted by the company's Accountable Officer*"
Enbridge recommends the following modification as it is impractical for the company's Accountable Officer to complete the actual filing: "*The Variance Application shall include a letter signed by the company's Accountable Officer confirming the requested name change.*"

Under *O.2 Variances, Examples of substantive changes that require a variance application, General*:
"• *addition of any permanent or temporary workspace that was not assessed in the original application (e.g., the workspace is not covered by the ESA, not covered by existing mitigation measures, and has the potential to change the significance determinations in the ESA)"*
Enbridge believes clarity is required here as the first section of the text implies that any new permanent or temporary workspace requires a variance, however, the example provided in parentheses indicates that changes that require new workspace, which are not covered by existing mitigation measures and that have the potential to change the significance determinations in the ESA require a variance. For clarity, Enbridge believes that not all additions of permanent or temporary workspaces not assessed in the original application should require a variance. Rather, as implied by the example in parenthesis, Enbridge recommends only those additions that have the potential to change the significance determinations in the ESA and cannot be mitigated using the existing mitigation measures should require a variance. This interpretation appears to be inline with the guidance provided under *O.3 Project updates, Guidance, Examples of non-substantive changes (i.e. project updates) that do not require a variance application* which states "*non-substantive expansion of a previously-approved temporary workspace"* do not require a variance.

Under *O.2 Variances, Examples of substantive changes that require a variance application, General*:
"• *undertaking project activities in different seasons"*
Enbridge believes clarity is required as to what is considered a season(s), as two dates may be considered to be in a different astronomical or meteorological season, such as February 28th and March 1st, or March 1st and March 15th; however, there may not be a change in impact from the undertaking project activities. Enbridge proposes that the CER consider revising this guidance so a variance will only be required where the project activities will be taking place in a different season, which will cause an additional impact that cannot be mitigated by the existing approved mitigation measures set out in approved conditions.

Under *O.2 Variances, Examples of substantive changes that require a variance application, Socio-Economic*:
"*o changes that result in unresolved issues and concerns from directly affected persons (e.g., might include Indigenous peoples; directly affected landowners; shippers; federal, provincial and municipal agencies)*
*o changes, not considered in the original application, that affect the ability to exercise or practice Indigenous and treaty rights"*
Enbridge requests additional examples be provided here. Specifically, it would be helpful to include additional examples of changes as this section can be interpreted broadly, and it is not clear how it applies with respect to unresolved issues and concerns from Indigenous peoples or changes that may affect the ability to exercise or practice Indigenous and treaty rights.

Under *O.3 Project Updates, Guidance*:
"*Companies are expected to ensure that all project updates are shared with potentially affected parties as committed to in the originally approved application.*"
Enbridge requests that this be clarified to state "…potentially affected parties to the hearing…"

Under *O.3 Project Updates, General*:
"• *non-compliances that were identified during the construction phase, but were corrected at the time; notification details should include:*
- *non-compliance summary including date;*
- *activity that was in non-compliance to a commitment, condition or regulation (e.g., EPP, OPR, s. 36(f)).etc.);*
- *steps taken to rectify the non-compliance; and*
- *steps taken to ensure the non-compliance would not be repeated.*"

Enbridge proposes that if the CER would like to have this information included in project updates, the information be requested by way of condition imposed on those projects with sufficient scope to warrant the requirement; as is currently the practice of the CER. The types of non-compliances that this new requirement would cover, the type Companies normally include as part of certain conditions like Construction Progress Reports, are conditions that are observed in the field and then corrected. No further action would normally be required. Enbridge recommends the CER set a

material level of severity, such as incidents that result in notifications to provincial or federal authorities and potentially affected Indigenous groups, or actions that result in contractor stand downs. The absence of a material threshold would result in onerous monitoring and reporting.

Under *O.3 Project Updates, Engineering*:
"• *adding or removing a light pole at a station entrance"*
Enbridge requests clarification on this bullet as it is unclear how widely or narrowly it should be interpreted. Specifically, it is unclear if this is meant to apply to all additions or removals of light poles, footings or equipment anywhere in the station or only applicable to the exact circumstances described. It is also unclear what condition is the root of the requirement. As it is currently written, this requirement could be understood to be regulating ground disturbance - but only if the activity is adding a new light pole. It could be understood to be regulating a reduction in security at the gate – but only if the activity is the removal of a light. It could also be for any number of other reasons such as filing document accuracy.

**Guide N (Review, Rescind or Rehear)**

Enbridge request clarification as to the applicability of this Guide. Specifically, it should be clearly stated if it is only applicable to section 69 (1) of the Canada Energy Regulator Act ("CER Act") *Power to review, vary or rescind — Commission* or if it also applies to 69 (2) of the CER Act *Power to vary or rescind — designated officer or inspection officer*.

Under the introductory paragraph:
*"It should be used when a reversal to a Commission decision or order is requested."*
Enbridge recommends the phrase be rewritten as follows to be consistent with the language is section 69 (1) of the Canada Energy Regulator Act:
"It should be used when requesting the Commission review or rescind a decision or order."

Under *Goal*:
*"Submissions identify the decision or instrument affected and include the grounds for review or rehearing of the decision or order."*
Enbridge recommends the phrase be rewritten as follows to be consistent with the language is section 69 (1) of the Canada Energy Regulator Act:
"Submissions identify the decision or instrument affected and include the grounds for reviewing, rehearing, or rescinding of the decision or order."

Under *Guidance* there appears to be a typo:
*"There is no automatic right of review or rehearing. In other words, the ~~Commissions'~~ Commission's power…"*

**Section 1.5 (Confidential Filing)**

Under the introductory paragraph:
*"The CER will protect the confidentiality of Indigenous knowledge if provided in confidence pursuant to section 58 of the CER Act. Confidential Indigenous knowledge does not need to meet the requirements described here. In situations where such knowledge is being shared, the CER will discuss the process and requirements with the party who is sharing that information."*
Enbridge shares the CER's commitment to protecting the confidentiality of Indigenous knowledge, and is hopeful that the clarity provided in this document on the CER's approach to Indigenous knowledge will facilitate sharing without compromising confidentiality of the information.

Under *1.5.1 Filling Requirements* there appears to be a typo:
"~~*Applicants*~~ *Applications for all requests to treat filings confidentially, whether in a proceeding or otherwise, must have sufficient detail and provide;*"

Under *Guidance, Section 60 and 61 of the CER Act*:
"● *Matters related to condition compliance where the condition is a "for approval" condition of the Commission ;*"
Enbridge proposes that this bullet should not be limited to "for approval" as there may be documents that are required for other conditions that meet the criteria in sections 60 and 61 of the CER Act and need to be treated confidentially.

Under *Guidance, Section 60 and 61 of the CER Act*:
"*When considering the confidentiality request, the Commission or Designated Officer may establish a comment process to solicit feedback on the request and may post a notice of the request on the CER website to permit comments from the public*"
Enbridge requests that it be explicitly stated in this section that the comment process and posting of a notice does not impact the date that the condition filing is considered complete. For example, if a condition filing is required 30 days in advance of construction and the proponent made that filing 30 days in advance while requesting the filing remain confidential, the filing should be considered complete on the date of filing. It should be reviewed by CER staff concurrent with the comment process being undertaken. The date that the comment process is complete or the date that the confidentiality decision is made should be independent from the date that the filing is considered to have been made.

Under *Other filings*:
"● *Matters related to condition compliance where the condition is a "for approval" condition of the Commission ;*"
As mentioned above, Enbridge proposes that this bullet should not be limited to "for approval" as there may be documents that are required for other conditions that meet the criteria in sections 60 and 61 of the CER Act and need to be treated confidentially.

Under *Other filings*:
"*When considering the request, the CER may seek feedback and may post a notice of the request on its website to permit comments from the public*"
As mentioned above, Enbridge requests that it be explicitly stated in this section that the comment process and posting of a notice does not impact the date that the condition filing is considered complete. For example, if a condition filing is required 30 days in advance of construction and the proponent made that filing 30 days in advance while requesting the filing remain confidential, the filing should be considered complete on the date of filing. It should be reviewed by CER staff concurrent with the comment process being undertaken. The date that the comment process is complete or the date that the confidentiality decision is made should be independent from the date that the filing is considered to have been made.

**Section A.3.1 (Supply) and Section A.3.3 (Markets)**

Under *Competitiveness*:
"*Describe the economic competitiveness of the supply source. Compare the competitiveness of the supply source and other sources supplying the same downstream markets. Consider how climate policy might affect competitiveness (see Filing Manual Table A-4 for more guidance).*"
Enbridge broadly supports this addition, but is concerned there is insufficient guidance on how much detail is required in the competitiveness comparison, particularly because competitiveness criteria can be subjective and the results of a comparison can change quickly depending on economic and market conditions. Enbridge requests additional detail be provided on what competitiveness criteria must be included in the comparison.

Enbridge thanks the CER for the opportunity to provide feedback on the proposed changes to the CER Filing Manual.

Please let me know if you have any questions.Sincerely,

ORIGINAL SIGNED BY

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