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To: All Group 2 Pipeline Companies under the Jurisdiction of the Canada Energy Regulator (CER) and Interested Parties

## Financial Regulation of Group 2 Companies

The Canada Energy Regulator (CER) regulates traffic, tolls and tariffs of pipeline companies under the *Canadian Energy Regulator Act* (CER Act) and associated regulations. For financial regulation, pipeline companies are divided into two groups: Group 1 and Group 2 companies. Group 1 companies<sup>1</sup> have generally been identified as pipeline companies with extensive CER-regulated systems. All other CER-regulated companies are treated as Group 2 companies.

This letter provides an overview of the financial regulatory requirements applicable to Group 2 companies, and may be used as a reference document. Pipeline companies are expected to comply with the CER Act, applicable regulations, and decisions, orders, and directives of the Commission of the CER (Commission). Additional information on financial regulatory requirements can be found in the [Filing Manual](#). Companies may also be subject to additional, unique Commission directives, depending on their circumstances.

### Overview of Requirements

Unless otherwise exempted by the Commission, to meet ongoing financial regulatory requirements, Group 2 companies must:

- Tolls and Tariffs
  - File tolls and tariffs with the CER before charging tolls to any shippers.
  - Provide current and potential shippers with enough information regarding tolls and tariffs to enable them to determine whether a complaint is warranted.
- Accounting & Financial Reporting
  - Maintain separate books of account in Canada in a manner consistent with generally accepted accounting principles.
  - File annual audited financial statements with the CER within 120 days of the end of the fiscal year.

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<sup>1</sup> The CER-regulated Group 1 pipeline companies are Alliance Pipeline Ltd., Enbridge Pipelines (NW) Inc., Enbridge Pipelines Inc., Foothills Pipe Lines Ltd., PKM Cochin ULC, Maritimes & Northeast Pipeline Management Ltd., NOVA Gas Transmission Ltd., Trans Mountain Pipeline ULC, Trans Québec and Maritimes Pipeline Inc., Trans-Northern Pipelines Inc., TransCanada Keystone Pipeline GP Ltd., TransCanada PipeLines Limited, and Westcoast Energy Inc.

- Abandonment Funding
  - File an abandonment cost estimate with the CER for approval, and apply to the CER for any changes to an abandonment cost estimate.
  - File a set-aside mechanism (letter of credit, surety bond, or trust) with the CER for approval to address abandonment funding obligations.
  - File an annual abandonment funding reporting form with the CER.
- Financial Resources Requirements
  - Maintain financial resources to cover the costs of an unintended or uncontrolled release.
  - File a Financial Resources Plan and annual reporting with the CER.
- Change in Ownership
  - File an application with the CER for approval prior to any amalgamation, or the sale, purchase, lease, or transfer of a pipeline or abandoned pipeline, in whole or in part.
  - Notify the CER in the case of a corporate name change.
- Change in Operating Status
  - File an application with the CER for approval when a pipeline, or part of one, has been deactivated, or not in operation, for 12 months or more.
  - File an application with the CER for approval when a pipeline, or part of one, is being returned to service after having been deactivated either for a period of 12 months or more or under a CER order.
  - File an application with the CER for approval prior to decommissioning or abandoning a pipeline, in whole or in part.
- Financial Regulatory Audits
  - Make the company's books, accounts, and records readily accessible by CER staff during a financial regulatory audit.

Each of these requirements is discussed in more detail below.

### **Transition to the CER**

On 28 August 2019, the CER Act came into force, replacing the *National Energy Board Act* (NEB Act), and the National Energy Board (NEB) became the CER. Every decision or order made by the NEB is considered to have been made under the CER Act and will be enforced as such. Every certificate, licence or permit issued by the NEB is considered to have been issued under the CER Act.

Regulations made under the NEB Act remain in force under the CER Act until they are repealed or others made in their stead. Updates to regulations are being implemented through a phased approach.

The Filing Manual is also currently undergoing a review process as a result of the new CER Act and to address other required updates.

Further information can be found on the [Implementing the CER Act](#) information page.

### **Tolls and Tariffs**

All companies may only charge tolls specified in a tariff that has been filed with the CER and is in effect, or that have been approved by an order of the Commission. The tolls and tariffs filing requirements for Group 2 companies are set out in section P.6 in [Guide P](#) of the Filing Manual. The CER regulates the traffic, tolls and tariffs of Group 2 companies on a complaint basis. It is the responsibility of a Group 2 company to provide its shippers and interested

parties with sufficient information to enable them to determine whether a complaint is warranted.

Group 2 companies are required to include in their tariffs the following explanatory note:

The tolls of the Company are regulated by the Canada Energy Regulator (CER) on a complaint basis. The Company is required to make copies of tariffs and supporting financial information readily available to interested persons. Persons who cannot resolve traffic, toll and tariff issues with the Company may file a complaint with the CER. In the absence of a complaint, the CER does not normally undertake a detailed examination of the Company's tolls.

Upon receipt of a written complaint, an application under Part 3 of the CER Act, or on its own initiative, the Commission may decide to examine a company's tolls and tariffs. In these circumstances, the Commission may request additional information including some or all of the information specified in sections P.1 through P.5 in [Guide P](#) of the Filing Manual.

### **Accounting and Financial Reporting**

The CER requires that Group 2 companies maintain separate books of account in Canada in a manner consistent with generally accepted accounting principles, and file audited financial statements within 120 days after the end of each fiscal year. Such statements should provide details of revenue and costs associated with the regulated pipeline. Where a Group 2 company operates a joint venture pipeline, it is required to disclose in its audited financial statements its beneficial share of revenue and costs associated with the regulated pipeline and to file a gross operating statement for the joint venture pipeline indicating whether, and if so by whom, this statement has been audited.

### **Abandonment Funding**

Pipeline companies are required to provide the CER with an abandonment cost estimate (ACE) for each CER-regulated facility they own. A level of detail and technical description should be provided to allow a person to form a reasonable understanding of the estimate.

The CER will conduct a review at least every five years with regard to any or all of the assumptions and methodology used in the determination of a company's ACEs. A process will be initiated in advance of the next ACE review to develop filing requirements and guidance on ACE calculations.

Pipeline companies are required to have a set-aside mechanism in place that will provide adequate funds to pay for pipeline abandonment. The set-aside mechanism must be filed with, and approved by, the Commission. The CER may also review the set-aside mechanisms during ACE reviews.

Pipeline companies may choose to file a letter of credit, surety bond, or trust as their set-aside mechanism.

- Letters of Credit and Surety Bonds
  - In its December 2019 [Letter to Group 2 Pipeline Companies](#), the CER provided a [model letter of credit](#) and a [model surety bond](#).
  - Companies must file an abandonment reporting form each year by 31 January. The form can be found on the CER website ([link](#)). Further guidance on the annual reporting form can be found in the CER's [letter dated 7 January 2020](#).

- Trusts
  - In its [MH-001-2013](#) Decision, the NEB set out Indicative Terms for companies proposing trusts in Appendix VI, PDF pages 135-139.
  - Companies using trusts must file a statement of investment policies and procedures with the CER for approval, the minimum requirements for which can be found in Section 3.4.1 on PDF page 61 of [MH-001-2013](#).
  - Companies proposing to collect abandonment funds from shippers must file a tariff application, which includes their annual contribution amount, with the CER for approval. The requirements are set out in Section 6.1.2 of [MH-001-2013](#) on PDF page 118.
  - Companies must file an abandonment reporting form each year by 30 April along with audited trust financial statements. The form can be found on the CER's website ([link](#)).

More information on abandonment funding can be found in [Guide B](#) of the Filing Manual.

### **Financial Resources Requirements**

Pursuant to sections 137 and 138 of the CER Act, companies operating pipelines are required to maintain financial resources to cover the costs of an unintended or uncontrolled release. Each company must maintain financial resources at least equal to its absolute liability limit, as defined in section 137 of the CER Act or section 2 of the [Pipeline Financial Requirements Regulations](#), or a greater amount if so specified by the Commission. A portion of the financial resources must be readily accessible to the company.

In the event of an unintended or uncontrolled release, the company must respond appropriately, contain the incident, and pay out all claims as appropriate.

Companies are required to satisfy the Commission that their financial resources meet the requirements of the CER Act and the associated regulations. In doing so, every company must file a Financial Resources Plan with the CER. The [Pipeline Financial Requirements Guidelines](#) provide further background on financial resources requirements as well as detailed information on the contents of financial resources plans.

Each company must also file with the CER, by 30 April each year, annual updates to its Financial Resources Plan. Further guidance on this annual reporting is set out in section 8.1 of the Pipeline Financial Requirements Guidelines. In addition, companies also have an ongoing obligation to notify the CER in writing if there are, or if a company has reason to believe there will be, any material revisions to its financial resources or its Financial Resources Plan.

Companies may apply to treat a portion or all of their Financial Resource Plan filing as confidential, pursuant to section 60 of the CER Act. For further details on how to make such a filing, see [section 1.5 of the Filing Manual](#). The Commission will assess any such requests on a case-by-case basis.

### **Change in Ownership**

Pursuant to subsection 181(1) of the CER Act, a company must not, unless the Commission has, by order, granted it leave to do so:

- sell or otherwise transfer, or lease, in whole or in part, its pipeline or its abandoned pipeline to any person; purchase or otherwise acquire, or lease, in whole or in part, any pipeline or abandoned pipeline from any person; or

- if it is authorized to construct or operate a pipeline or if it owns an abandoned pipeline, amalgamate with any other company.

More information, including filing requirements, can be found in [Guide R](#) of the Filing Manual. A form that can be used for change in ownership applications is available on the [CER website](#). Use of the form is voluntary; however, all of the information contained in the form must be included in any application filed with the CER.

In addition, when the company who operates a pipeline will change (e.g., in the event of a change in ownership), all relevant certificates and/or orders must be varied, pursuant to section 69 of the CER Act. Therefore, for administrative purposes, companies are also strongly encouraged to notify the CER and request an amendment to their order(s) or certificate(s) when there is a change to the name of the holder of the order(s) or certificate(s). Further information can be found in [Guide O](#) of the Filing Manual.

### **Change in Operating Status**

Deactivation & Reactivation: If a company has maintained a pipeline or part of one in a deactivated state for 12 months or more, or if the pipeline has not operated for 12 months or more, the company must file an application for the deactivation of the pipeline with the CER.

Deactivated facilities may be reactivated in the future, but an application to reactivate must be filed with the CER prior to reactivation. Filing requirements and guidance on filing an application to deactivate or reactivate can be found in [Guide G](#) and [Guide H](#) of the Filing Manual, respectively.

Decommissioning: A company must file an application with the CER prior to decommissioning a pipeline or part of one. More information on the filing requirements and guidance for filing an application to decommission can be found in [Guide K](#) of the *Filing Manual*.

Abandonment: A company must apply to abandon facilities prior to abandonment. An abandonment application should include the reasons for the abandonment as well as the procedures to be used for the abandonment. More information can be found in [Guide B](#) of the Filing Manual.

For decommissioning and abandonment, the Commission must grant leave to the company to proceed prior to any decommissioning or abandonment work taking place.

Notification of commercial third parties is normally required when the outcome of the application will affect such matters as tolls or tariffs, commercial contracts, or the ability of third parties to receive, transport or deliver commodities. The Commission must be assured that all commercial third parties who could be affected by a decision are aware of an application and have had the opportunity to comment should they wish to do so. More information on the notification of commercial third parties can be found in Chapter 3.5 of the Filing Manual.

### **Financial Regulatory Audits**

The CER may perform a financial regulatory audit of a company's records. When identifying companies to audit, the CER follows a risk-based approach that takes into account, among other things, the relationship between the company and its shippers, and the availability of current financial information to the CER. The final audit report is placed on the public record and served on interested parties. Details regarding audit objectives, confidentiality,

approach, and procedure are available on the [Financial Regulatory Audit Policy page](#) of the CER website.

### **Filing Documents with the CER**

Companies can file documents with the CER in one of three ways: electronically, in hard-copy (by mail or courier), or by facsimile.

Electronic Document Submission: The CER encourages parties to file documents utilizing the Electronic Filing System as it reduces costs, improves efficiency and access to information, and increases the ease with which documents and information can be searched and retrieved.

Companies can file their documents electronically on the CER website's [Applications and Filings](#) page. Further instruction on electronic document submission can be found [here](#) or in the in the CER's [Filer's Guide to Electronic Submission](#).

For letters of credit and surety bonds, original, hard-copy, signed documents must be filed with the CER.

Hard Copy Document Submission: Documents can be filed with the CER by mail or courier at the below address. Filings should include contact information, the file number, and a brief description of the filing.

Canada Energy Regulator  
Suite 210, 517 Tenth Avenue SW  
Calgary, AB T2R 0A8

Documents Submitted by Facsimile: Documents can be filed with the CER by facsimile at (403) 292-5503, or (facsimile toll-free) 1-877-288-8803. Filings should include contact information, the file number, and a brief description of the filing.

The CER is dedicated to the safety and well-being of its staff, Indigenous communities, the public, and all those with whom we work closely. For more information on how the CER is continuing its regulatory oversight during the COVID-19 pandemic, please refer to the following letter issued 12 May 2020: [www.cer-rec.gc.ca/CovidProcessUpdate](http://www.cer-rec.gc.ca/CovidProcessUpdate).

### **Documentation**

All companies are encouraged to document their key toll and tariff processes and procedures, including clearly defined roles and responsibilities for each function and a training program for new employees. The goal of this documentation is to ensure that regulatory requirements are fully understood and complied with on an ongoing basis.

Companies are advised to refer to the applicable legislation and past NEB and CER decisions, policies, and guidelines for more detailed guidance and to gain an understanding of their full legal obligations.

For additional information on the responsibilities of Group 2 regulated companies, please contact CER staff at [financial.regulation@cer-rec.gc.ca](mailto:financial.regulation@cer-rec.gc.ca) or by calling toll-free at 1-800-899-1265.

Yours sincerely,

*Original signed by*

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