



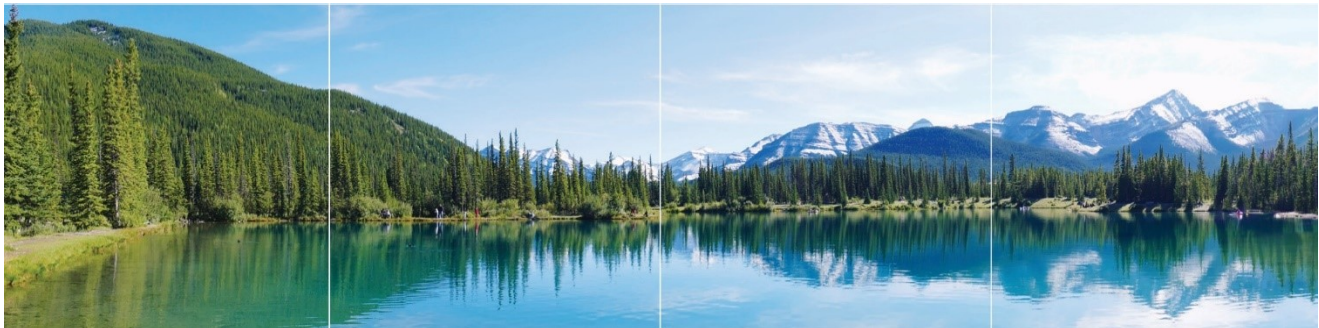
Governance of the Canada Energy Regulator

Mandate, Roles and Responsibilities

Table of Contents

1.0 INTRODUCTION	2
2.0 MANDATE	2
2.1 CER MISSION, VISION AND LEGISLATIVE MANDATE	2
2.2 GOVERNMENT OF CANADA POLICY	4
3.0 ROLES AND RESPONSIBILITIES	4
3.1 THE CER WITHIN THE GOVERNMENT OF CANADA	4
3.2 MINISTER OF NATURAL RESOURCES	5
3.3 DEPUTY MINISTER	5
3.4 BOARD OF DIRECTORS AND CHAIRPERSON	6
3.4.1 <i>Board of Directors</i>	6
3.4.2 <i>Chairperson and Vice-Chairperson</i>	7
3.5 CHIEF EXECUTIVE OFFICER	8
3.6 COMMISSION AND LEAD COMMISSIONER	9
3.6.1 <i>Commission</i>	9
3.6.2 <i>Lead Commissioner and Deputy Lead Commissioner</i>	10
3.6.3 <i>Designated Officers</i>	11
3.7 INDIGENOUS ADVISORY COMMITTEE	11
3.7.1 <i>Indigenous Advisory Committee</i>	12
3.7.2 <i>Indigenous Advisory Committee Chairperson and Vice-Chairperson</i>	12
4.0 INTERNAL CER COMMUNICATIONS	13
5.0 CONDUCT STANDARDS	13
5.1 GOVERNOR IN COUNCIL APPOINTEES	13
5.2 CONDUCT STANDARDS FOR CER EMPLOYEES	14

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1.0 Introduction

This document is a governance tool that provides guidance to the Board of Directors (the Board), Commissioners, the Chief Executive Officer (CEO), Indigenous Advisory Committee (IAC) members, and staff of the Canada Energy Regulator (CER) regarding their roles and responsibilities in supporting the effective delivery of the CER's mandate. It is also intended to serve as a summary and guide for members of the public regarding the governance structure of the CER.

The document will be posted on the CER public website and otherwise made available to members of the public on request. This document will be reviewed no less than every three years by the Board and updated as may be required.

Wherever the terms "Regulator" or "CER" are used in this document, it refers to the CER in its entirety.

This document must be understood in the broader context of the legal framework applicable to the CER, as well as the CER's role within the Government of Canada, of which it is part. This document is not intended to and does not interfere with the CER's exercise of its legislated mandate, including the independence of the Commission when acting in its adjudicative capacity.

2.0 Mandate

2.1 CER Mission, Vision and Legislative Mandate

The CER is a departmental corporation and agent of the Crown established under the *Canadian Energy Regulator Act* (CER Act). Other statutes pursuant to which the CER exercises powers or functions, or that otherwise apply to the CER include but are not limited to the:

- *Canada Oil and Gas Operations Act*
- *Canada Petroleum Resources Act*
- *Impact Assessment Act*
- *Access to Information Act*
- *Privacy Act*
- *Canada Labour Code*
- *Financial Administration Act*

The CER's Mission is:

We regulate energy infrastructure in a way that prevents harm and ensures the safe, reliable, competitive and environmentally sustainable delivery of energy to Canada and the world. We recognize and respect the inherent and constitutionally protected rights of First Nations, Inuit and Métis. We provide energy information and analysis that informs and supports Canada's transition towards a net zero future.

The CER's Vision is:

The CER is a recognized leader in the regulation of energy infrastructure. We enable safe, reliable, competitive and environmentally sustainable energy transmission. We have the confidence of Canadians and we uphold the inherent and constitutionally protected rights of First Nations, Inuit and Métis. Our commitment to regulatory excellence enhances Canada's global competitiveness.

The CER's Mission and Vision are grounded in the CER's legislated mandate, and the purpose and preamble of the CER Act. The CER's mandate is found in section 11 of the CER Act:

The Regulator's mandate includes:

- (a) making transparent decisions, orders and recommendations with respect to pipelines, power lines, offshore renewable energy projects and abandoned pipelines;*
- (b) overseeing the construction, operation and abandonment of pipelines, interprovincial power lines and international power lines and overseeing work and activities authorized under Part 5 as well as abandoned facilities;*
- (c) making orders with respect to traffic, tolls and tariffs and overseeing matters relating to traffic, tolls and tariffs;*
- (d) making decisions and orders and giving directions under Part 8 with respect to oil and gas interests, production and conservation;*
- (e) advising and reporting on energy matters;*
- (f) providing alternative dispute resolution processes;*
- (g) exercising powers and performing duties and functions that are conferred on the Regulator under any other Act of Parliament; and*
- (h) exercising its powers and performing its duties and functions in a manner that respects the Government of Canada's commitments with respect to the rights of the Indigenous peoples of Canada.*

The CER's mandate should be understood in the broader context of the CER Act's preamble, and its purpose as set out in section 6:

6. The purpose of this Act is to regulate certain energy matters within Parliament's jurisdiction and, in particular,

- (a) to ensure that pipelines and power lines as well as facilities, equipment or systems related to offshore renewable energy projects, are constructed, operated and abandoned in a manner that is safe, secure and efficient and that protects people, property and the environment;*
- (b) to ensure that the exploration for and exploitation of oil and gas, as defined in section 2 of the Canada Oil and Gas Operations Act, is carried out in a manner that is safe and secure and that protects people, property and the environment;*
- (c) to regulate trade in energy products; and*
- (d) to ensure that regulatory hearings and decision-making processes related to those energy matters are fair, inclusive, transparent and efficient.*

Where a 'designated project'¹ contains activities regulated under the CER Act, an integrated impact assessment between the Impact Assessment Agency of Canada (the Agency) and the CER is required, which involves coordination and collaboration between the two organizations. The impact assessment meets the requirements of both the *Impact Assessment Act* (IA Act) and the CER Act. It is undertaken by a review panel, at least one member of which is appointed by the Agency from a roster of CER Commissioners, on the recommendation of the Lead Commissioner. The Lead Commissioner is consulted by the Minister of Environment and Climate Change on the review panel's terms of reference.

The CER's mandate should also be understood in the context of the CER's Departmental Results Framework, including its Core Responsibilities of Energy Adjudication, Safety and Environment Oversight, Energy Information, and Engagement, as well as the CER's organizational values, as reflected in the *Code of Conduct for CER Employees* and the *Values and Ethics Code for the Public Sector*.

The general powers, duties and functions of the Commission (which is part of the CER) as an adjudicator and court of record, together with the scope of its jurisdiction, are set out in sections 31 through 36 of the CER Act.

¹ The *Physical Activities Regulations*, made under the *Impact Assessment Act*, establish the criteria for which projects are 'designated', meaning that they require an impact assessment.

2.2 Government of Canada Policy

The CER is subject to broader Government of Canada policy, as applicable and respecting the Commission's independent adjudicative responsibilities. This includes policies and management requirements of the Treasury Board. The CER regularly works with other government departments and agencies in the interest of policy development and delivery of its legislated mandate to support policy coherence and coordinate activities.

The Governor in Council and the Minister of Energy and Natural Resources (the Minister), as applicable, may provide policy guidance and direction to the CER on matters of general application in a variety of ways, including but not limited to regulation, directions of general application on broad policy matters section 13 of the CER Act, other written policies of general application, and correspondence. For example, communications may pertain to matters such as the applicability of government priorities or policies to the CER, or the establishment as appropriate of objectives for the CER.

The CER also has a specific mandate under sections 80 through 84 of the CER Act to provide policy advice and recommendations to the Minister, both at the Minister's request (mandatory) and at its own initiative (discretionary). Further, the CER may, on request, provide advice to another federal, provincial or territorial department or agency (s.84). In support of this aspect of its mandate, the CER is required to maintain a broadly-based study and review of matters relating to the energy sector in Canada and abroad as well as the safety and security of regulated facilities. CER officials supporting the advisory mandate bear in mind the requirement to make use of data and information from Government of Canada sources whenever possible (s.86), as well as the confidentiality of advice to the Minister, which may not be published without the Minister's prior approval (s.83(2)).

3.0 Roles and Responsibilities

3.1 The CER within the Government of Canada

The CER is part of the Government of Canada, and its employees are part of the federal public service. The CER is a departmental corporation and considered a "Separate Agency" under Schedule V of the Financial Administration Act, and is subject to applicable federal legislation, regulation, guidance and directives. The CER is ultimately accountable to the Minister of Energy and Natural Resources (NRCan) and supports the Minister's accountability to the Prime Minister and to Parliament for the CER's overall performance. The Board of Directors, Commissioners and the CEO are all appointed by the Governor in Council on the recommendation of the Minister. The CEO is designated as the deputy head, with the rank and powers of a deputy head of a department.

A distinctive responsibility of the CER is the adjudicative role exercised by the Commission, in which it is required to make independent recommendations and decisions in accordance with the CER Act and the requirements of procedural fairness. The assurance of this independence is central to the CER's mandate.

The CER is part of a ministerial portfolio. In practice, most of the CER's routine dealings with government are conducted through the Deputy Minister of NRCan and other departmental officials. The CER's role within the broader government framework is guided by the principles set out in *Open and Accountable Government: A Guide for Ministers*.

3.2 Minister of Energy and Natural Resources

The Minister responsible for the CER is the Minister of Energy and Natural Resources. The Minister engages with the Board of Directors on its responsibility for governance of the Regulator, including providing strategic direction and advice to the Regulator. The Minister also consults the Board on the appointment of the CEO. The Minister engages the CEO on key operational matters. The Minister does not engage with the Commission on regulatory or adjudicative matters,

The Minister has residual authorities with respect to the CER, either directly or through recommendations to the Governor in Council, on matters such as appointments, time limit extensions and directives to ensure timeliness of recommendation reports, approval of certain regulations, entry into agreements with Indigenous governing bodies under section 77 of the CER Act, and energy policy of general application.

The Minister is accountable to the Prime Minister and to Parliament for the overall effectiveness of the CER in delivering on its mandate, and accordingly has responsibility and authority for communicating broader government policy and priorities to the CER in a manner consistent with its statutory independence. The CER is one of several entities that are part of the Minister's portfolio responsibilities, which include organizations with natural resource policy, regulatory and/or oversight responsibilities, including the NRCan, the CER, the Canadian Nuclear Safety Commission; the Canada-Newfoundland Offshore Petroleum Board; the Canada-Nova Scotia Offshore Petroleum Board; and the Atomic Agency of Canada Limited. The Minister provides guidance to the Deputy Minister of NRCan and all agency heads on their expectations of portfolio integration and alignment, and the Deputy Minister of NRCan has specific responsibilities with respect to supporting and coordinating alignment amongst the portfolio organizations.

In practice, ministerial responsibilities for portfolio organizations are largely exercised through officials from the Minister's office and department. The Minister may exercise substantial discretion regarding the extent of personal engagement with the CER, and also regarding the role of the portfolio deputy (the Deputy Minister of NRCan), but in all cases communication with the senior leadership of the CER, specifically the Chairperson of the Board and the CEO, is important.

The Minister receives the legislated annual reports of the Regulator (submitted by the Board) and of the Commission (submitted by the Commission) and introduces these reports in the House of Commons and the Senate within 15 sitting days (of the respective chambers) of receipt.

The Minister is accountable to the Prime Minister and Parliament to ensure that the CER discharges its statutory powers, duties and functions in a manner that fulfils its mandate and is consistent as appropriate with government policy. The Minister's accountability to Parliament for the CER includes, in addition to submission of reports as required by statute, responding to questions raised in Parliament (e.g., in Question Period or through parliamentary returns) and appearing before committees as required. The CER supports these responsibilities of the Minister.

3.3 Deputy Minister of NRCan

The Deputy Minister of NRCan is a key link between the CER and the Minister. The Deputy Minister works with the Board, or the Chairperson on behalf of the Board, on matters related to the Board's mandate and with the CEO on key operational matters including, for example, the development and implementation of applicable policies; CER business planning and reporting; and budget and resource-related matters. The Deputy Minister may play an active role in any general portfolio coordination initiatives under the direction of the Minister.

While the Deputy Minister of NRCan does not have direct authority over the CER, they play a key role

in promoting appropriate policy coordination and building coherence in the activities and reporting of the portfolio bodies.

In practice, much of the senior level communication between the CER and the government takes place between the CEO and Deputy Minister level counterparts at other departments and agencies, including NRCan, Environment and Climate Change Canada, the Impact Assessment Agency of Canada, the Canadian Nuclear Safety Commission, and other departments with regulatory oversight responsibilities.

3.4 Board of Directors and Chairperson

3.4.1 Board of Directors

The CER's Board is comprised of between five and nine directors, including the Chairperson and Vice-Chairperson of the Board. At least one of the directors is required to be an Indigenous person. All members of the Board are appointed by the Governor in Council to serve part-time, at pleasure, for a term of up to five years, with the possibility of renewal for additional terms of up to five years. No one serving as a Commissioner, CER employee or the CEO may be appointed as a Director. In discharging their responsibilities, Directors must act in the best interests of the CER and without conflict of interest. The Board makes decisions and exercises its authorities collectively, and by consensus where possible.

Under the CER Act, the Board is responsible for the governance of the entire Regulator, and its governance functions include providing strategic direction and advice to the CER. In providing strategic advice, the Board offers recommendations and insights to inform the organization's activities, with other parts of the CER's governance structure (e.g., Commissioners or the CEO) having final decision-making authority. In providing strategic direction, the Board is ultimately the decision-maker on the matter. As part of its role, the Board approves the CER's governance documents², regulations within the Regulator's authority, and the CER's Annual Report. It also develops and oversees the implementation of the Strategic Plan. In governing the Regulator, the Board must not give directions or provide advice with respect to any particular decision, order or recommendation that is made by the Commission or a Commissioner.

Accordingly, the Board is responsible for governance and strategic advice and direction and is focused on organizational results and outcomes. It does not normally engage in day-to-day operations, which are the responsibility of the CEO. The Board and CEO are responsible for ensuring the CER delivers effectively on its mandate and is aligned with government policy, in accordance with their respective legislative responsibilities.

In meeting its responsibilities, the Board:

- May obtain independent advice regarding matters relevant to its mandate, in consultation³ with the CEO;
- Ensures sound governance and high ethical standards and accountability throughout the CER;
- Acts in a manner consistent with the purposes and provisions of the CER Act and other applicable legislation and policy direction, and upholds the honour of the Crown, furthering reconciliation with Indigenous Peoples;
- Provides strategic direction on matters related to governance, for example, its own bylaws and/or approval of Board-led CER policy statements (such as the CER's Statement on Reconciliation with Indigenous Peoples), related governance policies/guidance, including

² The Board approves governance documents that apply to the arms of the governance structure (Board, IAC, Commission, and CEO); internal governance documents do not require Board approval.

³ Consultation is required given that the CEO has final decision-making on matters of resource allocation and expenditure.

- Board committee structure, terms of reference and Board workplans⁴;
- Provides strategic direction on the CER's Strategic Plan, with responsibility to approve the three-year Strategic Plan and oversee its implementation;
- Provides strategic direction on regulations that are the responsibility of the Regulator.
- Approves annual audited financial statements⁵ from the Office of the Auditor General (OAG) (signed by the Chair of the Board on behalf of the Board);
- Provides strategic direction on succession planning for Indigenous Advisory Committee members;
- Provides strategic direction on CER alignment with Government of Canada policy as applicable, including with respect to Reconciliation with Indigenous Peoples;
- Provides strategic direction on succession planning for Directors, advice to the Minister on Director appointments, as well as advice to the Minister on the appointment and performance of the CEO;
- Provides strategic advice on:
 - CER performance management, risk management and financial management;
 - Opening and closing of CER offices outside of Calgary⁶
 - Specific initiatives and activities that directly contribute to the implementation of the Strategic Plan aligned with identified strategic priorities
 - Annual updates to the CER's Regulatory Framework Plan
 - The financial and other support requirements of the Board
- Submits legislated annual report on the CER's activities to the Minister and may submit other reports on the CER's activities if it considers it appropriate to do so;
- Establishes the IAC and endorses IAC membership; and
- Receives and responds to advice from the IAC, and co-develops certain initiatives with the IAC, while maintaining its legislated oversight and decision-making role.

The Board works closely with the CEO, who provides the Board with the information needed to discharge its responsibilities. The Board does not appoint the CEO, however it is consulted by the Minister on the CEO's appointment. The Board also contributes to the assessment of the CEO's performance as part of the federal Performance Management Program for Heads of Agencies and Other Governor in Council Appointees, led by the Privy Council Office.

The Board may make bylaws respecting the conduct of its meetings and the general conduct of its activities. The Board may conduct the majority of its work through standing or ad hoc committees.

3.4.2 Chairperson and Vice-Chairperson

The Chairperson and Vice-Chairperson of the Board are appointed by the Governor in Council to serve part-time, at pleasure, for a term of up to five years. The Chairperson presides over meetings of the Board, and performs duties or functions assigned by the Board. The Vice-Chairperson supports the Chairperson in their duties, particularly those related to governance and leadership, and acts as Chairperson in the event that the Chairperson is absent, unable to act, or if there is a vacancy in that office.

The Chairperson leads the Board to ensure effective delivery of the Board's legislated mandate and responsibilities. The Chairperson:

⁴ The Board Work Plan outlines the Board's priorities for each fiscal year (including Committee priorities). For the Policy Committee, the Work Plan drives the work of the Committee by detailing specific items that the Committee will focus on.

⁵ As per the *Statement of Management Responsibility Including Internal Control over Financial Reporting*, responsibility for the integrity and objectivity of financial statements, and all information contained in financial statements, rests with the management of the CER (CEO and Chief Financial Officer). The Board is responsible for overseeing the financial reporting process.

⁶ As per s.10(3) of the CER Act, the head office of the Regulator is to be in Calgary, Alberta. The Regulator's Chief Executive Officer may open or close other offices after consulting the board of directors.

- Ensures the Board fulfills its legislated mandate and responsibilities in a transparent manner;
- Oversees the application of sound governance practices;
- Ensures Board operations are efficient, and make effective use of supporting human and financial resources;
- Presides over Board meetings;
- Acts as the main point of contact between the Board and the CEO between Board meetings;
- Represents the Board and appears on its behalf at official functions and engagement events, and has prime responsibility for interaction, on behalf of the Board, with the Minister, Lead Commissioner and Commission, CEO, Regulator officials, and external officials, parties or bodies, having regard to the Board's mandate;
- Works actively with the Vice-Chairperson, Committee Chairs, CEO, Commission leadership, and IAC leadership to develop appropriate and effective mechanisms of communication, consultation and alignment such as regular leadership meetings;
- Works with the CEO to develop appropriate and effective mechanisms of communication with the Minister and Deputy Minister on behalf of the Board of Directors;
- After consultation with the Board, nominates Directors to serve as Chairperson and members of each Board Committee;
- Is an ex-officio, non-voting member of all Board Committees, except where they are committees of the whole Board, in which case, the Chair may attend as an acting and voting member;
- Maintains a competency matrix for the Board and leads the Board in succession planning for Directors;
- Leads an annual performance evaluation process for the Board, and contributes to the performance evaluation process for the CEO, supported by the Vice-President and Chief of Staff, as well as the CER's Chief Human Resources Officer;
- Ensures that new Directors receive effective orientation and ongoing training opportunities; and
- Performs all other duties and functions as may be assigned by the Board.

3.5 Chief Executive Officer

The CEO is appointed by the Governor in Council on the recommendation of the Minister following consultation with the Board. The CEO serves full-time, at pleasure for a term of up to six years and may be reappointed but may serve a maximum of 10 years in total.

The CEO is responsible for the management of the CER's day-to-day business and affairs, including the supervision of its employees and their work, and has the rank and power of a deputy head. However, the CEO does not give directions with respect to any particular decision, order or recommendation that is made by the Commission or a commissioner. The CEO works closely with the Board and provides the Board with the support needed to carry out its responsibilities.

As a Governor in Council appointee and deputy head of a departmental corporation, the CEO has multiple accountabilities and relationships with the Board, the Deputy Minister of NRCan (as NRCan Portfolio Lead Deputy Minister), the Minister of NRCan, and other bodies such as the Treasury Board and the Public Service Commission. The CEO's terms and conditions of employment are set by the Privy Council Office (PCO), and while the CEO does not report to the Board nor the Deputy Minister of NRCan, both are engaged in providing advice to the Minister and the Governor in Council in setting performance expectations and evaluating the CEO's performance as a deputy head.

As the Accounting Officer for the CER under the *Financial Administration Act*, the CEO has final decision-making on matters of resource allocation and expenditure of funding allocated to the CER

through Parliamentary appropriations. The CEO is responsible for issues regarding policy compliance⁷ and appears before committees of the House of Commons and Senate regarding their stewardship of the CER. The CEO is accountable for management of CER finances, human resources and labour relations, and for compliance with various Treasury Board policies and directives, such as those relating to risk, asset management and acquired services, information management and technology, people management, security, and official languages. The CEO is responsible for establishing, implementing and maintaining a Departmental Results Framework⁸ that sets out the department's Core Responsibilities, Departmental Results and Departmental Results Indicators.⁹

The CEO leads external engagement activities of the CER and also serves as the primary CER spokesperson, although the Chairperson, other Directors, Lead Commissioner and other Commissioners also have responsibilities in these areas as identified in Engagement Guidance for GIC Appointees.¹⁰ The CEO's day-to-day responsibility for the CER and responsibilities as deputy head also mean that they conduct most of the ongoing engagement with the Minister and Deputy Minister.

While the Board has responsibility for making regulations under specific provisions in the CER Act, the CEO is responsible for ensuring compliance with applicable federal directives, such as the Cabinet Directive on Regulation (the Directive). The CEO approves the annual Forward Regulatory Plan (referred to as the "CER's Regulatory Framework Plan") as required under the Directive.

The CEO is responsible for providing the support services and the facilities that are needed by the Commission to exercise its powers and perform its duties and functions in accordance with the rules that apply to its work. This support is provided in such a way as to respect the independence of the Commission's adjudicative role. The CEO also provides support and resources needed by the Board and IAC in the execution of their mandates. The CEO is responsible for and holds final decision-making on matters of resource allocation and expenditure.

3.6 Commission and Lead Commissioner

3.6.1 Commission

The Commission is comprised of up to seven full-time Commissioners, including the Lead Commissioner and Deputy Lead Commissioner, who are appointed by the Governor in Council, and hold office on good behaviour for renewable terms of up to six years (for a maximum total service of 10 years). The Commission may also include a complement of part-time Commissioners. At least one full-time Commissioner must be an Indigenous person. Generally, three members of the Commission constitutes a quorum.

The Commission makes regulatory decisions as set out in the CER Act and other legislation. In its adjudicative role, it ensures adherence to the purpose and provisions of the CER Act, s.35 of the *Constitution Act, 1982*, Part III of the *Official Languages Act*, the rules of procedural fairness, and other applicable legislation and binding policy direction. It also applies CER policies of broad application, such as the CER's Statement on Reconciliation with Indigenous Peoples.

The Commission makes adjudicative decisions and recommendations independently.¹¹ The Commission's independence is a key element of the CER's mandate. Pursuant to the CER Act, the

⁷ Policy on Financial Management, <https://www.tbs-sct.canada.ca/pol/doc-eng.aspx?id=32495>.

⁸ The Departmental Results Report (DRR) will be shared with the Board for awareness given alignment with content reviewed and approved in the Annual Report.

⁹ Policy on Results <https://www.tbs-sct.canada.ca/pol/doc-eng.aspx?id=31300>.

¹⁰ GIC appointees may also have responsibilities related to external engagement activities.

¹¹ Additionally, as noted in s.35 of the CER Act, the Commission may make rules generally for the carrying out of its work and the management of its internal affairs, including rules respecting (a) the powers, duties and functions of the commissioners; (b) its sittings; (c) its decisions, orders and recommendations; and (d) its procedures and practices.

Board of the CER is not permitted to give directions or provide advice with respect to any particular decision, order or recommendation of the Commission. On these matters, the CEO may provide advice, but not direction.¹²

The Commission is part of the CER; it contributes to the overall effective delivery of the CER's mandate, and operates in a manner consistent with the strategic direction of the CER while being responsible for maintaining its adjudicative independence. The Commission is also mindful of the Departmental Results Framework, in particular the CER's Core Responsibilities of Energy Adjudication and Safety and Environment Oversight. The Commission is responsible for ensuring continuous improvement and effectiveness in the areas in which it works.

The Commission has all the powers, rights and privileges vested in a superior court of record with respect to any matters within its jurisdiction, including the attendance, swearing and examination of witnesses, the production and inspection of documents, the enforcement of its orders and the entry on and inspection of property (s.31(2), CER Act). Among its responsibilities and authorities, it may adjudicate (including on its own initiative) on any matter where a person has done or failed to do anything required by the CER Act, report on any matter related to the work of the Commission or any application or proceeding before it and may also inquire into any accident involving a pipeline or other CER-regulated facility. The Commission has the power to make orders and prohibitions for the enforcement of its decisions.

The Commission may make rules for carrying out its work and managing its internal affairs vis-à-vis adjudication, including rules respecting the powers, duties and functions of Commissioners, its procedures and practices, its sittings and its decisions, orders and recommendations.

The Commission must submit an Annual Report on its activities to the Minister. The Commission may also submit other reports on its activities to the Minister if it considers it appropriate to do so.

3.6.2 Lead Commissioner and Deputy Lead Commissioner

The Lead Commissioner is responsible for the business and affairs of the Commission. For integrated impact assessments between the Impact Assessment Agency and the CER, the Lead Commissioner is consulted by the Minister of Environment and Climate Change on the review panel's terms of reference. At least one member of the review panel is appointed by the Agency from a roster of CER Commissioners, on the recommendation of the Lead Commissioner.

The Deputy Lead Commissioner supports the Lead Commissioner in their duties, particularly those related to governance and leadership and acts as the Lead Commissioner in the event that the Lead Commissioner is absent, unable to act, or if there is a vacancy in that office.

The Lead Commissioner leads the Commission to ensure effective delivery of the Commission's legislated mandate and responsibilities. In particular, the Lead Commissioner:

- Is responsible for the business and affairs of the Commission and, in particular, is responsible for apportioning the Commission's work among the commissioners and for establishing panels;
- May give instructions and take measures regarding timeliness and time limits, including excluded periods, and may exercise other statutory authorization powers, as set out in CER Act;
- Ensures the Commission fulfills its legislated mandate and responsibilities, and that it carries out its adjudicative processes in a transparent manner;
- May authorize one or more of the Commissioners to report on any matter related to the work of the

¹² As noted in s.25 of the CER Act, the CEO is also responsible for the provision of the support services and the facilities that are needed by the Commission to exercise its powers and perform its duties and functions in accordance with the rules that apply to its work.

- Commission or any application or proceeding before it;
- Collaborates with the CEO on an ongoing basis to ensure that the Commission has the support services or facilities, or other resourcing needs necessary to discharge its responsibilities in a manner that respects the adjudicative independence of the Commission;
- Presides over meetings of the full Commission;
- Acts as the main point of contact between the Commission and the CEO and Board, contributing directly to the efficient functioning of the CER's governance structure;
- Communicates to the CEO and Board, on behalf of the Commission, on matters of common interest, strategy, policy and other non-adjudicative matters;
- Works actively with the Deputy Lead Commissioner, CEO and Board leadership to develop appropriate and effective mechanisms of communication, consultation and alignment, such as through regular leadership meetings;
- Represents the Commission and appears on its behalf at official functions;
- May engage with the Minister of Energy and Natural Resources on matters related to the recruitment and appointment of Commissioners, and with respect to the exercise of any of their authorities set out in the CER Act as well as other matters related to the effective functioning of the Commission;
- If requested to do so, participates in the selection process of new Commissioners; and
- Ensures that Commissioners receive effective orientation and ongoing training opportunities, based at least in part, on the Commission's Competencies and Attributes.

3.6.3 Designated Officers

Pursuant to section 54 of the CER Act, the Governor in Council may make regulations that specify powers, duties and functions of the Commission that are technical or administrative in nature and may be exercised or performed by designated officers. The circumstances under which designated officers may exercise such responsibilities, and the procedures and processes applicable to their exercise are also set out in regulation. The CEO is responsible for apportioning work among the designated officers, who are employees of the CER.

3.7 Indigenous Advisory Committee

The preamble to the CER Act states that the Government of Canada is committed to achieving reconciliation with First Nations, the Métis, and the Inuit through renewed nation-to-nation, government-to-government and Inuit-Crown relationships based on recognition of rights, respect, cooperation and partnership. The CER exercises its powers and performs its duties in a manner that respects and furthers this commitment.

Consistent with the above commitment, section 57 of the CER Act requires that the CER establish an advisory committee for the purpose of enhancing the involvement of Indigenous Peoples and Indigenous organizations in respect of pipelines, power lines and offshore renewable energy projects as well as abandoned pipelines under Part 2 of the CER Act; Part 2 addresses safety, security and protection of persons, property and environment. Section 57 further provides that membership of the IAC must include at least one person recommended by each of an Indigenous organization that represents the interests of First Nations, an Indigenous organization that represents the interests of the Inuit, and an Indigenous organization that represents the interests of the Métis.

In addition to the minimum legal requirement in section 57, the Board also seeks the IAC's advice on other matters that address a broader range of strategic issues that relate to the interests of Indigenous Peoples.

3.7.1 Indigenous Advisory Committee

The IAC is an integral part of the CER's governance structure. Its overarching mandate is to advise the Board, for the benefit of the entire CER, on how the CER can build new relationships with Indigenous Peoples. The IAC's work is grounded in Reconciliation, with the United Nations Declaration on the Rights of Indigenous Peoples, the Truth and Reconciliation Commission's Calls to Action, and the Principles Respecting the Government of Canada's Relationship with Indigenous Peoples forming the foundation and providing the roadmap for the IAC's work. The Board and IAC share the goals of establishing strong relationships, and ensuring the IAC's advice has a meaningful, timely and measurable impact on the CER's strategies and work.

The IAC is not a decision-making body, nor does it engage or provide advice on any particular decision, order or recommendation made by the Commission or other CER adjudicative decision-makers. The IAC operates to protect adjudicative independence by:

- Focusing its discussions and advice on strategic, policy and program development matters of broader, systemic impact (as opposed to individual or project-specific impact); and
- Refraining from discussing or providing advice on any particular decision, order or recommendation actively before the Commission.

IAC membership reflects Canada's diversity of Indigenous communities, languages, genders, geographies, and skills and expertise. IAC membership includes one directly recommended member from each of the Assembly of First Nations, Inuit Tapiriit Kanatami, and the Métis National Council.

IAC meetings are held quarterly, including bi-annual joint meetings with the Board, with additional meetings being held on an as-needed basis. The IAC's work is guided by a Work Plan, co-endorsed by the IAC and Board. In formulating its advice, the IAC strives to find common ground and consensus where possible, while acknowledging that the diversity of the Committee may result in multiple points of advice being provided on some issues.

The IAC operates in a transparent manner, posting materials to the CER's website, including Terms of Reference, member biographies, approved meeting minutes, and any final written IAC advice.

3.7.2 Indigenous Advisory Committee Chairperson and Vice-Chairperson

The IAC Chairperson and Vice-Chairperson are selected by the IAC. The IAC Chairperson:

- Takes a leadership role within the IAC and serves as its spokesperson;
- Co-endorses with the Board Chairperson, meeting agendas, and presides over meetings;
- Guides the IAC in the delivery of its mandate, ensuring the Terms of Reference and other applicable protocols and guidance are respected;
- Ensures IAC meetings are carried out effectively, including by ensuring participation from all members, and that all relevant matters are addressed;
- Is a liaison between the IAC and CER including by participating in regular leadership meetings and communications with the Board Chairperson and CEO; and
- Ensures that new IAC members receive effective orientation.

The IAC Vice-Chairperson:

- Supports the IAC Chairperson in the delivery of their roles and responsibilities, as requested by the IAC Chairperson; and
- Acts as IAC Chairperson, in the event they are absent, or unable to act, or if there is a vacancy in that position.

4.0 Internal CER Communications

The roles and responsibilities of the Board, CEO, Commission, and IAC are distinct, and independence in carrying out those roles must be respected while at the same time recognizing the interdependent nature of these relationships as part of one Regulator. It is essential that the pillars of the governance structure, through their respective leadership and as groups, communicate and collaborate with one another on matters of shared interest and impact to the entire CER. Such communication and collaboration foster internal CER cohesiveness and a shared sense of purpose, while respecting the Commission's adjudicative independence. When communicating and collaborating in areas of shared interest, the Board, Commission, and IAC each strive to share their advice and perspectives through a common or collective voice on behalf of their respective arms of the governance structure where possible.

In practice, most communication and collaboration occur bilaterally between the CEO and each of the Board Chairperson, Lead Commissioner, and IAC Chairperson. Other forms of communication include:

- Meetings of Board leadership, Commission leadership, and the CEO
- Meetings of Board leadership, IAC leadership, and the CEO
- Meetings of the Board Chairperson and IAC Chairperson
- Attendance of the Lead Commissioner at Board meetings
- Attendance of IAC leadership at Board meetings

Examples of areas that may require communication and collaboration amongst the pillars of the governance structure, as appropriate, include:

- Overarching CER strategy, including development and implementation of the CER's Strategic Plan and related strategic priorities;
- Continual improvement in CER processes, including through incorporation of learnings, engagement feedback, and best practices;
- Building meaningful relationships with Indigenous Peoples and stakeholders over the full lifecycle of CER-regulated infrastructure;
- CER regulations and overarching policies of broad application;
- Identifying and addressing systemic issues within the regulated industry to prevent harm;
- Effective management of urgent issues or emergencies within the CER or with respect to CER-regulated infrastructure;
- Communication and transparency of CER activities and decisions;
- Efficient and effective use of human and financial resources in support of all CER activities; and
- CER alignment with government policies of broad application, including binding policy direction issued under section 13 of the CER Act.

5.0 Conduct Standards

The CER expects all of its senior officials and staff members to adhere to the highest standards of ethical conduct for the public sector.

5.1 Governor in Council Appointees

As Governor in Council appointees, Directors (including the Chairperson and Vice-Chairperson), the CEO, and Commissioners (including the Lead Commissioner and Deputy Lead Commissioner) are subject to statutory conduct standards as well as other conduct standards that are terms and conditions

of appointment. These include the *Conflict of Interest Act*, the relevant annexes of *Open and Accountable Government*, such as those pertaining to ethical guidelines and political activity guidelines for public office holders, and the Terms and Conditions applying to Governor in Council Appointees.¹³ Sections 16, 22 and 29 of the CER Act specify certain circumstances that constitute a conflict of interest for purposes of the *Conflict of Interest Act* for Directors, the CEO and Commissioners respectively.

IAC members are not Governor in Council appointees. IAC members act in accordance with Annex A to the IAC Terms of Reference, to ensure the protection of adjudicative independence and avoidance of any real or perceived conflicts of interest that may arise in the course of the IAC's work.

5.2 Conduct Standards for CER Employees

CER employees are subject to the behavioral standards applicable to the federal public administration, including the *Public Service Disclosure Protection Act* (PSDPA), and the *Values and Ethics Code for the Public Sector* established by the Treasury Board pursuant to that Act. These instruments set out conduct standards (both principles and expected behaviours) and provide mechanisms for seeking remedies or redress for wrongdoing.

As required by the PSDPA, the CER has its own *Code of Conduct for CER Employees* which incorporates the *Values and Ethics Code for the Public Sector* in a way that is reflective of the CER's unique mandate. The conduct of CER employees must align with the values of Respect for Democracy, Respect for People, Integrity, Stewardship and Excellence, and the guiding principles of the Prevention of Harm and Adjudicative Independence.

Public servants should respect the elements of *Open and Accountable Government*. Conventions and practices of Canada's system of government pertaining to the independence of administrative tribunals, which are set out in *Open and Accountable Government*, have distinctive relevance to the CER.

Finally, public servants are subject to the political neutrality provisions of the *Public Service Employment Act*, which is administered by the Public Service Commission of Canada.

¹³ Terms and conditions applying to Governor in Council appointees, <https://www.canada.ca/en/privy-council/programs/appointments/governor-council-appointments/compensation-terms-conditions-employment/terms-conditions.html>