

Consultation Paper:

Canadian Energy Regulator Time Management Regulations

Introduction

The Canadian Energy Regulator Act (CER Act), proposed in [Bill C-69](#)¹, would replace the National Energy Board (NEB) with the Canadian Energy Regulator (CER). While the CER, like the NEB, would remain based in Calgary and continue to serve as an independent federal energy regulator, there are a number of key changes that would enhance its ability to regulate the life-cycle of federal energy projects, including pipelines and power lines, energy development, and trade.

The proposed CER Act contains legislated time limits for the CER to issue reports, orders, authorizations, or certificates for different types of projects that fall within its regulatory mandate. The CER Act also provides the authority to make regulations outlining when time periods may be excluded from the calculation of those legislated time limits, which means that those periods would not count towards the maximum number of days allowed by the legislation.

This paper provides a description of the proposed Canadian Energy Regulator Time Management Regulations (Regulations) that will outline the circumstances in which the time taken to complete certain activities may be excluded from the calculation of legislated time limits.

These Regulations closely mirror the time management aspects of the Information Requirements and Time Management Regulations currently being developed in relation to assessments conducted by the Impact Assessment Agency of Canada (IAAC) or Review Panels under the proposed Impact Assessment Act. This will provide greater consistency and predictability across all project reviews conducted by the Government of Canada, regardless of the department or agency conducting the assessment. You can read about the Information Requirements and Time Management Regulations being developed in relation to the proposed Impact Assessment Act at this link:

<https://www.impactassessmentregulations.ca/information-management-and-time-management>

¹ The proposed CER Act was introduced in February 2018 through Bill C-69, *An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts*. Upon coming into force, the CER Act would replace the NEB Act, and introduce the Canadian Energy Regulator (CER), with an adjudicative Commission.

Context

The CER Act includes new legislated timelines for reviews of interprovincial and international pipeline and power line projects, as well as for offshore renewable energy projects that are not designated projects as defined under the Impact Assessment Act (including the Regulations Designating Physical Activities or as designated by the Minister under Section 9 of the Impact Assessment Act). Designated projects under the Impact Assessment Act will be subject to the Information Requirements and Time Management Regulations developed under that Act.

The timelines for reviews of projects conducted by the CER vary depending on the type of application:

- For applications for a certificate under section 182 of the CER Act (regarding pipelines that are not designated projects as a result of the Impact Assessment Act) the time limit for submitting a recommendation report to the Minister is 450 days from the day on which the applicant has provided a complete application;
- For applications for an exemption order under section 214 of the CER Act (regarding pipelines that are not designated projects as a result of the Impact Assessment Act) the time limit for making the order or dismissing the application is 300 days from the day on which the applicant has provided a complete application;
- For applications for a certificate under section 262 of the CER Act (regarding international or interprovincial power lines that are not designated projects as a result of the Impact Assessment Act) the time limit for issuing the certificate or dismissing the application is 300 days from the day on which the applicant has provided a complete application; and,
- For applications for an authorization under section 298 of the CER Act (regarding offshore renewable energy projects or offshore power lines that are not designated projects as a result of the Impact Assessment Act) the time limit for issuing the authorization or dismissing the application is 300 days from the day on which the applicant has provided a complete application.

Overview of the Time Management Regulations

The Regulations will outline the circumstances in which the time periods needed to complete certain activities may be excluded from the calculation of legislated time limits for an assessment. Setting out clear circumstances in the Regulations provides enhanced transparency and predictability for all parties.

The proposed circumstances in which time periods needed to complete certain activities may be excluded from the calculation of legislated time limits for an assessment are:

- 1) If the applicant requests that the timeline be suspended, for any activity, until such time as the activity has been completed.
- 2) For the applicant to provide information related to a design change, or change in construction or operation plans by the proponent that could change the potential impacts of the project.
- 3) In the event of non-payment by the applicant of any recoverable costs, until such time as the payment has been received.²

The proposed Regulations will specify that only whole days are to be counted. This means that any action taken on one calendar day would take effect on the following calendar day.

Please see Annex A and Annex B attached to this document for the draft text of the Regulations.

The exclusion of time periods from the calculation of legislated time limits for an assessment would not happen automatically, but only on decision of the CER Lead Commissioner, in accordance with the circumstances set out in the proposed Regulations. The CER Lead Commissioner will be required to issue written reasons for their decision, for accountability and transparency in the management of timelines. These will be posted on the CER's online regulatory document registry.

Next steps

If you have feedback relating to these proposed Regulations, please submit them by email, fax, or mail to the address provided below. The deadline for providing comments is June 7th, 2019.

After the close of the comment period, written comments will be posted on the NRCan Public Consultations: A New Canadian Energy Regulator web page, at <https://www.rncanengagenrcan.ca/en/collections/new-canadian-energy-regulator-0>.

The Regulations can only be formally finalized following the Royal Assent of the proposed CER Act, which will provide the Governor in Council and the Regulator with the authority to make the Regulations. The proposed Regulations are being released now in order to inform the ongoing legislative review of Bill C-69 (which includes the proposed CER Act) by Parliament. The proposed CER Act will come into force on a date identified by order of the Governor in Council. In order to be ready for coming into force, the final Regulations would be published in Canada

² For the CER, "cost recoverable activities" refers to fees, levies and charges that may be required by the regulations under section 87 of the CER Act.

Gazette, Part II, following Royal Assent. As such, this consultation paper seeks stakeholders' input on the proposed Regulations. A summary of the comments received, as well as a detailed outline of any changes to the regulatory proposal, will be provided in the Regulatory Impact Analysis Statement that will accompany publication of the Regulations, in order to provide industry and stakeholders with as much information as possible on the proposed regulatory requirements.

Please visit the website for information and updates on the Regulations. You may also sign up there to be included in an email distribution list for receiving updates as the Regulations are developed, including information on public engagement opportunities.

Contact Information

Time Management Regulations Team
National Energy Board
Suite 210, 517 Tenth Avenue SW
Calgary, Alberta T2R 0A8

Telephone: 403-292-4800 (or toll free at: 1-800-899-1265)

Fax: 403-292-5503 (or toll free at: 1-877-288-8803)

TTY (teletype): 1-800-632-1663

Email: timemanagementreg@neb-one.gc.ca

Departmental Contact:

Joel Allan, Regulatory Development Specialist

Phone: 403-463-0530

ANNEX A

DRAFT FOR PUBLIC CONSULTATION

Regulations Prescribing the Circumstances For the Purposes of Subsections 183(5) and 214(5) of the [Canadian Energy Regulator Act](#) (regarding pipelines that are not designated projects as a result of the proposed Impact Assessment Act)

Definitions

1 The following definitions apply in these Regulations.

Act means the *Canadian Energy Regulator Act*. (*Loi*)

applicant means the applicant for a certificate under subsection 182(1) of the Act or the applicant for an order under subsection 214(1) of the Act. (*demandeur*)

Commission means the Commission referred to in section 26 of the Act. (*commission*)

Exclusion of Time Periods

2 For the purposes of subsections 183(5) and 214(5) of the Act, the circumstances during which periods may be excluded from the calculation of the time limit under subsection 183(4) or 214(4) of the Act are:

- (a) the applicant submitted a written request to the Commission, asking for the exclusion of a period relating to the report under subsection 183(1) of the Act or the order under subsection 214(1) of the Act from the calculation of the time limit;
- (b) the undertaking of studies or the collection of information relating to a change, by the applicant, in the design, the construction or the operation of a pipeline, and the resulting effects of the change, if the Commission is of the opinion that there is not sufficient information available to it for the purpose of issuing the report under subsection 183(1) of the Act or the order under subsection 214(1) of the Act; or
- (c) the applicant has not paid the fees, levies or charges referred to in paragraph 87(1)(a) of the Act, on or before the date on which they are due.

Coming into force

3 These Regulations come into force on the day on which section 10 of the *Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts* comes into force, but if they are registered after that day, they come into force on the day on which they are registered.

ANNEX B

DRAFT FOR PUBLIC CONSULTATION

Regulations Prescribing the Circumstances For the Purposes of Subsections 262(6) and 298(6) of the [Canadian Energy Regulator Act](#) (regarding international or interprovincial power lines, and offshore renewable energy projects or offshore power lines, that are not designated projects as a result of the proposed Impact Assessment Act)

Definitions

1 The following definitions apply in these Regulations.

Act means the *Canadian Energy Regulator Act*. (*Loi*)

applicant means the applicant for a certificate under subsection 262(1) of the Act or the applicant for an authorization under subsection 298(1) of the Act. (*demandeur*)

Commission means the Commission referred to in section 26 of the Act. (*commission*)

Exclusion of Time Periods

2 For the purposes of subsections 262(6) and 298(6) of the Act, the circumstances during which periods may be excluded from the calculation of the time limit under subsection 262(4) or 298(4) of the Act are the following:

- (a) the applicant submitted a written request to the Commission, asking for the exclusion of a period relating to the application for a certificate under subsection 262(1) of the Act or an authorization under subsection 298(1) of the Act from the calculation of the time limit;
- (b) the undertaking of studies or the collection of information, relating to a change, by the applicant, in the design, the construction or the operation of an international or interprovincial power line referred to in subsection 262(1) of the Act or a work or activity referred to in subsection 298(1) of the Act, and the resulting effects of the change, if the Commission is of the opinion that there is not sufficient information available to it for the purpose of issuing the certificate or authorization, as the case may be; or
- (c) the applicant has not paid the fees, levies or charges referred to in paragraph 87(1)(a) of the Act, on or before the date on which they are due.

Coming into force

3 These Regulations come into force on the day on which section 10 of the *Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to*

make consequential amendments to other Acts comes into force, but if they are registered after that day, they come into force on the day on which they are registered.