

# Canadian Energy Regulator Reviewable Projects

## 7. Canadian Energy Regulator Reviewable Projects

The Canadian Energy Regulator (CER) (formerly, the National Energy Board (NEB)) reviews and makes determinations on applications for federally regulated pipeline projects. In determining whether a pipeline project should proceed, the CER reviews, among other things, its economic, technical and financial feasibility, and the environmental and socio-economic impact of the project. The CER conducts audits and inspections of federally regulated pipeline construction and operation to ensure that engineering, safety and environmental requirements are met.

The CER and the Commission entered into a [Memorandum of Understanding \(MOU\)](#) to enhance cooperation and coordination between the parties, to outline a mutual aid agreement between the parties in respect of incident investigation and emergency response, and to establish a protocol for coordinating training and technical liaison in areas of comment interest between the parties.

CER approvals differ from other authorizations issued by the Commission under specified enactment, as they are related to activities regulated under the federal Canadian Energy Regulator Act rather than the Oil and Gas Activities Act (OGAA). To maintain this distinction, separate application types have been created in the Commission's Application Management System (AMS) for CER related approvals. The Commission may also conduct inspections of any CER related project on which an approval has been issued by the Commission.

This chapter includes an overview of the Commission's regulatory authority with respect to CER related projects, guidance requirements, and application specific requirements. For detailed instructions on completing application data fields in AMS, the reader may need to refer to other chapters of this manual.

**Please Note:**

This chapter is dedicated to CER related applications; however, this manual is written as a whole and available to industry in sections to allow permit holders to access activity chapters. The applicant should review the manual in its entirety and be aware of the content in other sections of the manual.

## 7.1 Commissions Approval Authorities

In accordance with Section 8 and Section 9 of OGAA, the Commission has limited authorities with respect to federally regulated pipelines and related ancillary activities. These authorities do not include the power to issue an approval for pipelines; however, applications for provincial authorizations including the pipeline right-of-way, road rights-of-way, and ancillaries, including facilities, are submitted to the Commission through AMS.

The Commission has authority to issue specific provincial approvals related to pipelines regulated under the Canadian Energy Regulator Act including:

- Land Act, Sections 11, 38, 39, 40 and 96;
- Forest Act, Sections 47.4 and 117; and
- Water Sustainability Act, Sections 10, 11 and 24.

## 7.2 Preparing, Planning & Application Requirements

As part of an CER pipeline or ancillary application, every applicant must:

- Prepare and submit construction plan(s) for the project as per Chapters 5.7.2 and 5.7.3 of this manual.
- Prepare additional maps and plans as required, defining the scope of the proposed project. See Chapter 5.7.1 for details.
- Carry out Rights Holder Engagement (RHE) and submit the required RHE Line List in accordance with Chapter 6.2.
- If a pipeline will be constructed over, under, parallel or perpendicular to another pipeline, and the applicant has not obtained agreement about construction from the

owner of the existing pipeline, a detailed description of efforts made to obtain agreement must be included in the RHE Line List.

- The Commission will consider the Environmental Protection and Management Regulation (EPMR), particularly Government's Environmental Objectives (GEOs), in its review of applications. Applicants should provide a document, such as an environmental management plan, that describes the conformance of their proposed activity with each of the GEOs in the EPMR.
- Complete an Archaeological Information Form (AIF) as described in Chapter 5.5 of this Manual.
- Include a First Nations [Project Description Form](#) and Cover Letter(s), found [here](#).
- Where an application is located in northeast BC, the Area-based Analysis (ABA), as described in Chapter 5.6.1 is considered. If the proposed activity is impacting an enhanced management or regulatory policy area, an ABA specific mitigation plan must be attached to the application.
- Upload the relevant Canadian Energy Regulator approval or application document.

## 7.3 Guidance Requirements

### 7.3.1 Environmental Protection and Management Regulation

By policy, the Commission applies the tests and principles of the EPMR to applications for provincial authorizations for CER regulated pipeline projects. Refer to the [Environmental Protection and Management Guide](#) (EPMG) for more information regarding how the Commission considers the identified values.

If CER related activities cannot be carried out in accordance with the guidance recommendation in this chapter (and other applicable chapters) and the EPMG, then a rationale must be included in the application. The rationale must include specifics of the guidelines not followed, an explanation of why they cannot be followed, as well as outline any planning strategies or operations measures that have been or will be implemented to mitigate impacts on the associated value.

## 7.3.2 Rights Holder Engagement

The province makes every effort to ensure that resource management is coordinated and that oil and gas activities will not adversely affect long-term rights holders' interests. Methods used to engage rights holders may vary depending on the nature and scope of the proposed related activity. If the proposed activity is within an area subject to the rights of the rights holder, and the applicant knows the ability of the rights holder to exercise their right will be directly and adversely affected, the Commission expects the applicant to engage the rights holder before submitting an application. Chapter 6.2.1 includes a comprehensive list of rights holders.

Where the RHE process, described in Chapter 6.2 this manual, is not practicable for a specific application, applicants may request permission to use alternate engagement practices or strategies. Variance requests must be made to the appropriate Authorizations Manager prior to application. Written approval of alternate engagement practices or strategies must be included with the application.

## 7.3.3 Map Reserves and Notations of Interest

Provincial and Federal government agencies are not considered rights holders. Applicants are not obligated to engage agencies in advance of an application to the Commission; however, applicants are encouraged to advise the Commission of any Land Act map reserves, Notations of Interest, or Resource Features (as defined in the EPMR) as early as possible, allowing the Commission to consider and facilitate engagement with other agencies and to avoid delays in application processing.

## 7.3.4 Archaeology Related Authorizations

To allow the Commission to consider impacts to archaeological resources, applicants are required to complete the Archaeology tab in AMS and submit an AIF as an attachment; however, the Archaeology Branch of the Ministry of Forest Lands, Natural Resource Operations and Rural Development (FLNRORD) oversees archaeological work carried out in accordance with the Heritage Conservation Act (HCA). Please refer to Chapter 5.5.5 of this manual, Table 5-E, for instructions on how to fill out the Archaeology Tab in AMS.

Applicants are responsible for ensuring that the appropriate archaeological assessment work is carried out prior to construction.

Where development activities such as harvesting trees, excavating utility trenches, or other ground-disturbing activities need to be conducted within the boundaries of a recorded archaeological site, a Site Alteration Permit under Section 12 of the HCA is required. The Archaeology Branch issues Site Alteration Permits for CER pipelines and ancillary activities.

### 7.3.5 ALR Disturbance

As CER projects are federal jurisdiction, they are not subject to the Delegation Agreement between the Provincial Agricultural Land Commission (ALC) and the BC Oil and Gas Commission, signed June 2013. However, the ALC expects that all CER projects will reclaim ALR lands to the same agricultural standard as other oil and gas developments on ALR lands. Applicants are required to contact the ALC if a CER activity falls within the ALR.

### 7.3.6 Area-Based Analysis

Where CER related applications are located within northeast BC, the applicant must consider the Commission's ABA approach. The ABA approach helps to minimize cumulative effects on the landscape, reduce the footprint of activities, and shorten restoration / reclamation timeframes on specific resource values.

Please see Chapter 5.6.1 of this manual for additional information regarding ABA requirements.

### 7.3.7 Engaging First Nations

Before submitting an application of any type to the Commission, companies are encouraged to initiate and build relationships directly with First Nations communities that may be impacted by a proposed activity.

Determining the First Nations to be consulted on each proposed activity is the responsibility of the Commission. However, in order to create application packages and conduct pre-engagement, applicants can obtain information on the First Nations in whose territory their activities are proposed by referring to the Consultative Areas Database (CAD) on GeoBC.

The Commission recommends that companies use an [Engagement Log](#) to record all meetings and conversations with First Nations communities. Creation and use of this Engagement Log is not required, but can provide helpful information that may be considered in the Commission's decision-making process. Applicants may contact the Commission's First Nations Liaison Officers to confirm the First Nations that the Commission will consult and for advice on engaging First Nations.

These engagements do not replace the First Nations consultation carried out by the Commission.

## 7.4 Application Processes

Applicants may submit their complete CER pipeline right of way and related ancillary applications to the Commission after having submitted the related pipeline application to the CER; however, the decisions on Commission applications are pending CER approval for the related pipeline (a Certificate of Public Convenience and Necessity).

Once all application documents have been prepared, the pipeline application may be submitted to the Commission through the AMS. Applicants may prepare multiple permit applications at the same time by selecting one or all of the activities of the oil and gas project. Multi-activity applications provide a complete picture of the project and the Commission encourages applicants to consider applying for all activities in a single application. Please see Chapter 3 (Application Management System Submission Process) of this manual for detailed instructions on completing applications.

### 7.4.1 Pipeline Rights of Way

New CER-reviewable pipeline project applications are submitted to the Commission for approval to occupy and use provincial Crown land under Section 39 of the Land Act. The

Commission does not issue an approval for the pipeline itself. Additional provincial approvals may be required to carry out construction of an CER pipeline, including:

- Occupation of Crown land under Section 39 of the Land Act for related ancillary activities (decking sites, workspaces, shooflies, etc.);
- Cutting permits under Section 47.4 of the Forest Act to harvest Crown timber, and approval under Section 117 for a road use permit to use forest service roads; and
- Approvals under Section 10 of the Water Sustainability Act to divert or use water for oil and gas purposes and Section 11 for changes in and about a stream (e.g., crossings and maintenance activities).

Crown land for a CER pipeline and CER related ancillary activities (camps, workspaces, etc.) are issued a License of Occupation under Section 39 of the Land Act. After post-construction submission and survey requirements are met, the license may be replaced by a Land Act Section 40 Statutory Right-of-way (for pipelines) or modified to match the post construction plan (for ancillaries). A License of Occupation conveys non-exclusive use for the purpose described and is not a registerable interest in the land. Government may authorize overlapping and layering of tenures.

Chapter 4.2 of this manual (Completing Pipeline Activity Details) provides guidance on applying for pipelines in AMS and should be referenced when applying for CER related pipelines; however, there are distinctions between OGAA regulated pipeline and CER related pipeline applications. Notable differences are:

- Due to the Commission's authorities, AMS will generate a modified version of the Pipeline Details tab for CER related pipelines; and
- Rather than a Consultation and Notification tab, AMS will generate a Rights Holder Engagement tab for CER related pipelines.

Spatial requirements for CER related pipelines applications are in the [AMS Spatial Data Submission Standards Manual](#).

**Please Note:**

Under the Land Act, the Commission cannot dispose of private land; however, legislation states the Commission must charge an application fee for the pipe. Therefore, the Commission requires spatial data for pipeline segments on both private and Crown land. A pipeline segment must be within a land polygon.

## 7.4.2 CER Related Roads Rights-of-Way

The Oil and Gas Activities Act (OGAA) and Oil and Gas Road Regulation (OGRR) do not apply to CER-reviewable projects; therefore, any road permit that may be granted to CER pipeline permit holders are issued under Section 39 of the Land Act and apply to Crown land only. For all types of road applications (whether OGAA or CER related), the Commission expects the same information to be provided, and CER related applicants should refer to the Oil and Gas Road Regulation for a clear sense of the standards to which proposed CER related roads should be designed, built, maintained, and decommissioned. CER related roads will be subject to permit conditions similar to provisions found in the OGAA and OGRR.

The Commission does not issue CER related road permits on private land but does approve changes in and about a stream (e.g., stream crossings), under Section 11 of the Water Sustainability Act, associated with roads on private land.

For guidance on completing application fields for road applications in AMS, please see Chapter 4.5.5 (Road Activity Submission: Data Field Completion) of this manual. In addition, the applicant should refer to the [AMS Spatial Data Submission Standards Manual](#) for guidance on completing CER related road applications.

## 7.4.3 New Road Application

A road approval is required for any new road on Crown land to be constructed and operated, for a non-status road to be maintained or modified by a CER pipeline permit holder, or to acquire a road approval for a road currently regulated under another statutory authority (Transfer of Jurisdiction).

Roads can be applied for individually or with a CER pipeline right-of-way or ancillary as part of a multi-activity application. The system generates data input requirements for additional activities specified within the spatial data upload.

Road applications for new roads must include all the applications requirements outlined in Section 7.2 of this chapter.

For existing non-status roads with no major upgrades or new area, RHE does not have to be included in the application. Where existing non-status roads require major upgrades and/or new area, rights holders must be engaged prior to application.

### **Please Note:**

A road permit is required prior to carrying out maintenance activities on non-status roads. Several non-status roads can be included in one road permit application by identifying each road as a separate segment in the application.

## 7.4.4 Road Amendment Application

A road amendment is required to carry out activities not approved by, or which are alterations to the original approval or to modify an approved road, except modifications allowed under the terms of the approval.

Road amendment applications may require RHE, depending on the nature of the amendment. If the applicant knows the ability of the rights holder to exercise their right will be directly and adversely affected, the Commission expects the applicant to engage the rights holder before submitting an amendment application.

## 7.4.5 Transfer of Jurisdiction

Applications for a “Transfer of Jurisdiction” of an existing road authorized by the Forests, Lands, Natural Resource Operations & Rural Development (FLNRORD) must be submitted as a new road application. The Commission will not transfer a road issued by FLNRORD to a CER

pipeline operator but will work with FLNRORD to enable the issuance of a Land Act road approval.

To apply for a CER related road permit on an existing road authorized by FLNRORD, applicants should include the following additional attachments:

- Documentation indicating the current road tenure holders' willingness to relinquish the road in favour of the CER operator; and
- Confirmation from FLNRORD of willingness to close the road permit upon the Commissions approval of a Land Act road permit.

## 7.4.6 CER Related Ancillary Activities

This process may be used to obtain access to provincial Crown land for stand-alone requirements, such as those that may arise during planning or maintenance activities, including (but not limited to) investigative use permits, temporary workspaces, and any compressor sites and meter stations (facilities) associated with a CER pipeline and located on Crown land.

Additional approvals that may be required with CER Related Ancillary applications may include Short-Term Water Use, Changes in and about a Stream, and new cut on Crown land.

Please see Chapter 4.6 (Completing Associated Oil and Gas Activity Details) of this manual and the [AMS Spatial Data Submission Standards Manual](#) for guidance on completing stand-alone ancillary applications.

### **Please Note:**

The Commission may approve land use to oil and gas operators for the purposes of a camp; however, additional authorizations and permits may be required from other provincial agencies to construct and operate a campsite.

## 7.4.7 Water Sustainability Act Section 10 Application Process

Applicants must acquire authorization under the Water Sustainability Act to use or divert any Crown water resources, except as otherwise exempted under the Water Sustainability Regulation. The water use approvals process may be used to obtain provincial authorizations for short-term use of water.

Please see Chapter 4.7 (Completing Short-Term Water Use Activity Details) of the manual and the [AMS Spatial Data Submission Standards Manual](#) for guidance on completing Short-term Water Use applications.

## 7.4.8 Water Sustainability Act Section 11 Application Process

Applicants must acquire authorization under the Water Sustainability Act for any works proposed to occur within a stream. The watercourse crossings and works process may be used to obtain provincial authorizations for stand-alone activities, such as those that may arise during planning or maintenance activities.

Please see Chapter 4.8 (Changes in and About a Stream Activity Details) of this manual and the [AMS Spatial Data Submission Standards Manual](#) for guidance on completing Changes in and About a Stream applications.

## 7.4.9 Forest Act Section 47.4 Application Process

The Forest Act – Cutting Permit application can be used in scenarios where an applicant may require a single use (stand-alone) licence to cut on Crown land or within a MoTI right-of-way. If a new cutting permit or a renewal of a cutting permit is required, the application can be made in AMS Application through the Forest Act – Cutting Permit application..

## 7.4.10 Forest Act Section 117 Application Process

Forest Roads declare as Forest Service Roads (FSR) by the FLNRORD are constructed, modified and generally maintained by forest companies. Section 117 of the Forest Act enables application for a Road Permit (RUP) for industrial use of a FSR that excludes forestry activities. The Commission considers road use applications related to oil and gas activities and renders decisions on RUP applications throughout the province.

Applications for RUP are outside of AMS and must be submitted electronically, via email to [RoadUsePermits@bcogc.ca](mailto:RoadUsePermits@bcogc.ca). There are no spatial requirements for RUP applications. Please see Chapter 4.5.4 of this manual for additional information regarding the application process.

## 7.5 Application Review & Determination

It is in the best interest of an applicant to submit their Commission applications as soon as possible after submitting a CER application. Spatial data is a requirement of Commission applications and this spatial data will inform the Commission's determination on any applications that may overlap the area planned for a CER pipeline, road and/or related ancillary. If applications are submitted to the Commission prior to the applicant receiving their CER Certificate of Public Convenience and Necessity, the Commission application may be halted until such time that the CER approval is issued.

Please see Chapters 1.2.2 (Application Submission and Review) and 1.2.3 (Application Review) of this manual for details regarding the Commission's application review processes. The Commission's technical reviews for CER related applications do not include engineering or agriculture.