

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 Regulator 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 common interest between the parties.

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

This chapter includes an overview of the Regulator'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 Regulators Approval Authorities

In accordance with Section 8 and Section 9 of ERAA, the Regulator 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 Regulator through AMS.

The Regulator has authority to issue specific provincial approvals related to pipelines regulated and/or related ancillary activities 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 a CER pipeline or ancillary application, every applicant must:

- Prepare and submit construction plan(s), and additional maps and plans are required for the project as per Chapters 5.7 of this manual.
- Carry out Rights Holder Engagement (RHE) and submit the required RHE Line List in accordance with Chapter 6.2.
- The Regulator 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.

- Carry out First Nations Engagement as described in Chapter 7.3.7 Engaging First Nations.
- Include a First Nations [Project Description Form](#) and Cover Letter(s), found [here](#).
- 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 Regulator 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 Regulator 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 energy resource 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 Regulator 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 Director prior to application. Written approval of alternate engagement practices or strategies must be included with the application.

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.

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 Regulator; however, applicants are encouraged to advise the Regulator of any Land Act map reserves, Notations of Interest, or Resource Features (as defined in the EPMP) as early as possible, allowing the Regulator to consider and facilitate engagement with other agencies and to avoid delays in application processing.

7.3.4 Archaeology Related Authorizations

To allow the Regulator 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 Forests (MOF) oversees archaeological work carried out in accordance with the Heritage Conservation Act (HCA). Please refer to Chapter 5.5 of this manual for more information on Archaeology.

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 Energy Regulator, signed December 2017. However, the ALC expects that all CER projects will reclaim ALR lands to the same agricultural standard as other energy resource developments on ALR lands. Applicants are required to contact the ALC if a CER activity falls within the ALR.

7.3.6 Engaging First Nations

To support reconciliation and ensure the meaningful participation of Indigenous people in processes affecting them, the BCER requires proponents to engage affected First Nations prior to application submission (pre-engagement) when planning energy resource activities on private or non-private land.

The objective of pre-engagement is for proponents and First Nations to proactively share information, identify potential impacts to Aboriginal and Treaty Rights, and discuss measures to avoid/mitigate those potential impacts when planning energy resource activities. Determining the First Nations to be consulted on each proposed activity is the responsibility of the Regulator. However, in order to create application packages and conduct the required 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 Guidance for Pre-engaging with Indigenous Nations](#) document provides information to support industry's pre-engagement with the First Nations as part of application and development planning process. The Regulator has a sample [Engagement Log](#) and a sample [Pre-Engagement Record](#) spreadsheet available on the website for use by industry, although if alternative formats capturing similar information area already in use, these can be used as well. These records should be included for each application submitted to the Regulator, and can be uploaded as an attachment in the applicable First Nations consultation section under the First Nations tab in AMS.

These records will be considered in the application review and decision making process, but they do not replace the First Nations consultations carried out by the Regulator.

7.4 Application Processes

Applicants may submit their complete CER pipeline right of way and related ancillary applications to the Regulator after having submitted the related pipeline application to the CER; however, the decisions on Regulator 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 Regulator through the AMS. Applicants may prepare a multi-activity by selecting one or all of the activities required for the project. Multi-activity applications provide a complete picture of the project and the Regulator 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 Regulator for approval to occupy and use provincial Crown land under Section 39 of the Land Act. The Regulator 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 energy resource 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 ERAA regulated pipeline and CER related pipeline applications. Notable differences are:

- Due to the Regulator'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 Regulator cannot dispose of private land; however, legislation states the Regulator must charge an application fee for the pipe. Therefore, the Regulator 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 Energy Resource Activities Act (ERAA) and Energy Resource Road Regulation (ERRR) 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 ERAA or CER related), the Regulator expects the same information to be provided, and CER related applicants should refer to the Energy Resource 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 ERAA and ERRR.

The Regulator 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 preparing spatial data for 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.

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 Regulator 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 Ministry of Forests (MOF), must be submitted as a new road application. The Regulator will not transfer a road issued by MOF to a CER pipeline operator but will work with MOF to enable the issuance of a Land Act road approval.

To apply for a CER related road permit on an existing road authorized by MOF 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 MOF of willingness to close the road permit upon the Regulator’s 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 Activity Details) of this manual and the [AMS Spatial Data Submission Standards Manual](#) for guidance on completing stand-alone ancillary applications.

Please Note:

The Regulator may approve land use to energy resource 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 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 application..

7.4.10 Forest Act Section 117 Application Process

Forest Roads declare as Forest Service Roads (FSR) by the MOF 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 Regulator considers road use applications related to energy resource 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@bc-er.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 Regulator applications as soon as possible after submitting a CER application. Spatial data is a requirement of Regulator applications and this spatial data will inform the Regulator'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 Regulator prior to the applicant receiving their CER Certificate of Public Convenience and Necessity, the Regulator 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 Regulator's application review processes. The Regulator's technical reviews for CER related applications do not include engineering or agriculture.