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VIA EMAIL:

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**Comments on the Commission of the Canada Energy Regulator’s (“CER” or “Commission”) Rules of Practice and Procedure Review (“Rules Review”) Discussion Paper**

Enbridge Inc. (“Enbridge”) would like to thank the CER for the opportunity to review and comment on the CER discussion paper dated September 9, 2024 related to review of the *National Energy Board Rules of Practice and Procedure, 1995* (“Rules”)<sup>1</sup>.

Enbridge recommends the CER consider the following over-arching principles in relation to any changes proposed to the Rules:

Efficiency

Processes should reflect, and be commensurate with, the scope of activity contemplated and the potential for impact – process steps should be deliberately chosen to further a specific regulatory purpose, allowing directly impacted intervenors and the CER to explore relevant areas of interest within the CER’s jurisdiction. The CER should avoid duplicative and unnecessary steps, and prioritize allowing parties enough time between process steps to engage meaningfully and substantively. Each step incorporated into a particular process should have a practical benefit. Consideration should also be given to the fact that parallel processes, including ongoing engagement, typically run concurrently with written and oral hearing processes.

Transparency

Modern, open and transparent regulatory systems incorporate mechanisms to provide predictable and timely services to parties who are regulated and to help them understand their regulatory obligations. Transparency is grounded in openness, communication, and accountability. Canada’s global competitiveness is enhanced with predictability and clarity of CER processes, requirements and timeframes, providing certainty to investors and stakeholders. Processes must be consistent with the framework contemplated in the *Canadian Energy Regulator Act* (“CER Act”) and across proceedings. Role delineation and clarity is critical in the regulatory context and encourages all parties to act openly, improving overall predictability and competitiveness.

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<sup>1</sup> [fdb6ff78f80757149232103295b55bcc\\_Discussion\\_Paper.pdf](#) (“Discussion Paper”).

### Timeliness

When regulated parties need to obtain a regulatory authorization, they should know how long it will take for the regulator to issue its final recommendation/decision. Accountability for timely decisions, responses and feedback will enhance public and industry confidence in, and the global reputation of, Canada's energy regulatory system. Timely decisions and reasonable response times enable industry to plan and execute work with confidence and stay competitive. Incorporation of process steps that are duplicative and/or lead to unnecessary and/or potentially lengthy delays in adjudicative processes with no practical benefit should be avoided.

### Flexibility

The Rules must not hinder the CER's ability to establish hearing processes that are responsive to and reflect non-typical or unusual circumstances. The proponent and all proceeding participants benefit when strategic steps can be incorporated that bring overall efficiency to a proceeding without compromising alignment with the Rules. On this basis, Enbridge considers that the Rules should be framed to remain sufficiently flexible to enable the CER to incorporate strategic, efficiency-focused steps where appropriate.

### Procedural Fairness

While it is important to preserve the CER's ultimate discretion to determine its own procedures and ability to deviate from established processes and procedures to ensure flexibility where appropriate, this must be done in a manner, and at a frequency, that interferes as little as possible with predictability and fairness. CER processes should not result in undue delay, or incorporate steps based on new requirements that are not in the CER Filing Manual. Participation by all parties must be conducted in a procedurally fair manner, ensuring parties are not unfairly excluded or burdened, and should allow appropriate testing of evidence filed.

Enbridge provides below specific comments and feedback in relation to the Discussion Paper for the CER's consideration as it updates the Rules to better align with the CER Act, enhance competitiveness through predictable and timely processes and modernize practices and procedures.

### ***Discussion Paper Objective #1: Align with the CER Act, including the objectives outlined in the Act's preamble, such as the commitment to Reconciliation.***

***Question 1: Are there specific process steps for cost apportionment applications that you would like to see made mandatory through the Rules?***

Third party project proponents should understand pipeline mitigation scope, cost estimates and cost responsibility before making final determinations of whether to proceed with a particular project. When a party is planning to conduct an activity near a federally-regulated pipeline and is experiencing difficulty agreeing on either the terms of the work or who pays for the associated costs related to authorized construction or disturbance, that party can engage the CER for assistance by filing a CER Act section 335(4)(g) application, but must do so in a timely manner – if they plan to engage the CER, they should be required to apply in advance of any pipeline mitigation work being completed. A party initiating a project that potentially interferes with the safety and integrity of existing federally-regulated pipeline infrastructure triggering the need for

extensive engineering review, analysis, inspection and mitigation work should not be allowed to later insist, after the pipeline mitigation work is completed in accordance with the instructions and timelines of the 3rd party, that the expenditures incurred by the facility owner to mitigate against the proposed project are the pipeline owner's sole responsibility.

**Question 2:** *Are there specific process steps for compensation applications that you would like to see made mandatory through the Rules?*

To improve efficiency and therefore competitiveness, the Rules should specifically allow for compensation hearings and cost apportionment hearings to be conducted through a written hearing using information requests rather than an oral hearing. Broadly, additional guidance on process steps and the establishment of formal timelines for both compensation and cost apportionment hearings would be beneficial. As an example, in one compensation hearing the book of authorities was required several weeks before argument, which was very difficult to produce. Guidance on typical process steps would set consistent expectations for all parties. Enbridge further considers that it is more procedurally fair to have a formal process established so that all parties know the rules on engagement of the process and are bound by those rules.

**Question 3:** *Do you have feedback regarding how the Rules could incorporate process steps for providing and protecting Indigenous knowledge within hearings?*

Enbridge engages with Indigenous groups to support the incorporation of Indigenous knowledge into its projects by means that are preferred and suitable to each of the interested Indigenous groups. This includes traditional land and resource use studies, community-led field studies, community participation in Enbridge-led studies, and Indigenous-led assessment.

Enbridge agrees with the CER that the Rules should be sufficiently flexible to allow Indigenous Peoples to choose what information to share with the Commission and how to share it – particularly as preferences and approaches may vary by Indigenous group. The Rules should also ensure the process is transparent and provides procedural fairness. For example, after determining how each Indigenous group wants to provide Indigenous knowledge, the process for providing Indigenous knowledge should be set out in a procedural order so that all parties can clearly understand the process and have time to plan for it.

Enbridge notes that the opportunity to provide oral Indigenous knowledge already exists, and the CER Act specifies that Indigenous knowledge must be considered if provided. Setting out a transparent and procedurally fair process to consider Indigenous knowledge in a confidential manner may be helpful.

Overall, Enbridge is supportive of incorporating, as appropriate, Indigenous cultural practices and procedures in hearing processes by, for example, introducing cultural practices during the hearing or having oral Indigenous knowledge sessions in-community or at locations convenient for community elders and representatives to attend. Enbridge respects and values such practices and is of the view that they can be incorporated in a manner that still ensures efficient, timely and inclusive hearing processes.

**Question 4:** *Would you like to see the role of the Crown Consultation Coordinator, and the nature of its participation in Commission hearings reflected in the Rules? If so, how?*

Enbridge considers that a policy direction or other mechanism would more appropriately support defining the Crown Consultation Coordinator's ("CCC") role given that the CCC role is relatively

new and continues to evolve – further experience with CCC participation in CER hearings would be beneficial before crystalizing the role in the Rules. There is an immediate need to clarify the role of the CCC and the manner in which it participates in CER proceedings, at a minimum addressing the following:

- a) confirming the unique, neutral role of the CCC;
- b) delineating the CER rationale and decision criteria to determine whether supplemental Crown consultation is warranted and appropriate so as to trigger participation of the CCC in a particular matter, recognizing the need to avoid duplication, added complexity and the capacity constraints of Indigenous groups. Since the proponent often undertakes extensive CER-mandated consultation with potentially impacted Indigenous groups and is generally well-positioned to answer questions regarding its project application and respond to project-related concerns, consideration could be given to making it clearer that procedural aspects of Crown consultation are in large part delegated to the proponent, with the CER's proceeding supplementing that consultation and the CCC addressing matters that cannot be dealt with through either the proponent's engagement or the CER proceeding;
- c) setting requirements for any CCC submissions, including direct attribution of Indigenous positions identified in the CCC submission, and a description of how the CCC verified and confirmed the contents of its submission with Indigenous groups;
- d) clarifying expectations of how project proponents are expected to work with the CCC, for example in relation to information sharing, update meetings, tri-partite meetings, information sessions etc.;
- e) providing project proponents access to materials prepared by CCC and shared with Indigenous groups, for example explaining the regulatory process and communities' opportunities for participation;
- f) outlining expectations of CCC in relation to recommending/suggesting additional process steps – duplicative and inefficient process steps should be avoided. New process steps should be the exception, and only recommended by CCC where CCC has considered existing steps planned in the applicable procedural order and concluded that the existing established process cannot suitably address the identified objective; and
- g) outlining how independence is maintained at the CER between CCC staff and hearing staff.

Enbridge considers that the role of CCC should be consistent across proceedings in which it participates, recognizing, however, the degree of CCC involvement will vary depending on the nature of a project's impacts and whether issues can be addressed through CER-mandated consultation and process.

**Question 5:** *Do you have other feedback related to how the Commission can align the Rules with the CER Act, including the objectives outlined in the Act's preamble, such as the commitment to Reconciliation, and the UN Declaration?*

Enbridge recommends that the Rules be focused on practice and procedure, not policy, and remain flexible to accommodate stakeholder needs over time. What may be required to satisfy the duty to consult will vary based on the specific decision or Crown conduct at issue.

***Discussion Paper Objective #2: Enhance competitiveness through predictable and timely processes***

***Question 6:*** *Do you have any suggested changes to the Rules to reflect hearings pursuant to the Canada Oil and Gas Operations Act or other legislation?*

Enbridge has identified overlap and inefficient duplication at times between CER processes and the processes of other regulators, for example the McKenzie Valley Land and Water Board (“MVLWB”). Enbridge recommends that the Rules not only include specific provisions that apply to hearings under legislation other than the CER Act within CER jurisdiction, but also consider potential mechanisms to combine, or at a minimum align, processes between regulators to enable efficiencies where possible and avoid unnecessary duplication, including conditions and post-approval processes.

***Question 7:*** *Do you have feedback with regards to any timelines set in the Rules, additional timelines you would like to see added to the Rules, or the approach for computation of time (Rules, s.5-7)?*

While certain computation of time provisions currently exist in the Rules as supplemented by the provisions of the *Interpretation Act* (R.S.C. 1985 c. I-21), s.26), the CER may consider importing additional elements, including holiday determination provisions, directly into the Rules similar to the Ontario Energy Board’s *Rules of Practice and Procedure*<sup>2</sup>.

Once CER process timelines are established, they should be respected and adhered to by all participants, and parties should generally be held accountable to participate in accordance with prescribed timelines absent material extenuating circumstances. All parties, including interveners, should be required to seek relief in advance of being permitted to file late submissions on a proceeding record. As well, in contrast to case-by-case decision-making regarding how timelines are adjusted or extended in any particular matter, transparent and consistent decision criteria for when established timelines will be relaxed or adjusted would be helpful and enhance transparency, consistency and minimize procedural delays.

***Question 8:*** *Do you have feedback related to the notice of motion process or suggested changes to support efficiency? Do you have feedback on the use of oral notice of motion processes to support efficiency?*

The Rules already provide at section 35(6) for the possibility of an oral notice of motion process during an oral hearing.

Enbridge considers that having a Motion Day set out in hearing orders helps to promote regulatory efficiency.

***Question 10:*** *Are there processes that you would like to see written into the Rules?*

Enbridge considers that the Rules should address the completeness decision, the initial threshold decision made by the Commission determining that an application is complete and can proceed through the CER assessment process. The Rules should be clear that the

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<sup>2</sup> [https://www.oeb.ca/sites/default/files/uploads/documents/regulatorycodes/2024-02/OEB\\_Rules-Practice-and-Procedure\\_20240201.pdf](https://www.oeb.ca/sites/default/files/uploads/documents/regulatorycodes/2024-02/OEB_Rules-Practice-and-Procedure_20240201.pdf) at s.6 (“OEB Rules”)

completeness decision process is a decision to be made by the Commission alone and does not include consideration of comments from intervenors or other external parties. This generally aligns with past practice and is appropriate given the nature of this initial threshold determination of whether the requirements of the Filing Manual have been met.

If retained by the CER, the current mandatory requirement that project proponents file a project notification with the CER at least two months in advance of filing any CER Act s.214 project application, and at least four months in advance of filing any CER Act s.183 project application, should also be reflected in the Rules.

Timely determination of application completeness assessments, as well as other critical determinations by the CER such as leave to open and reactivation application decisions, enhance transparency and should also be expressly provided for in the Rules – all of these decisions are critical to delivering timely service to shippers in Canada and Canada's competitiveness generally. While application complexity can influence how quickly a completeness assessment can be completed, Enbridge considers that even the most complex application can be assessed for completeness, and a completeness determination reached, within 30 days – to take more than 30 days to assess completeness of an application is unreasonable given the ample notice received through mandatory project notification and the non-substantive nature of the exercise to confirm that the application includes information that addresses each item of the relevant CER Filing Manual checklist (and Early Engagement Guide as applicable) in enough detail to enable parties to understand and begin to assess what the applied-for project entails and its potential impacts.

**Question 11:** *Do you have feedback regarding changes that could be made to the information request process to clarify its use and support efficiency?*

Enbridge recommends that, in relation to information requests, the Rules should be refined to incorporate threshold criteria that an information request must meet in order to be issued to a party. The current threshold allows information requests to relate to any matter that is raised in the party's written evidence. In Enbridge's experience, use of this threshold can result in applicants or other parties receiving numerous, extensive requests for information that in Enbridge's view does not necessarily relate to matters within the CER's jurisdiction to consider or contribute to a better understanding of the issues in the proceeding. Responses to information requests require significant time and resources to prepare, and should be limited to matters that are material, relevant and reasonable for informed decision-making purposes. Frivolous information requests and onerous information requests in relation to low-risk matters are inefficient and detract from industry competitiveness and procedural fairness. Enbridge further considers that, whatever threshold information request criteria is established, it must apply to all hearing participants, including Commission staff.

Where possible, applicants would appreciate and benefit from advance notice that information requests are planned to be issued in order to allow resources to be scheduled and engaged accordingly. In the interests of transparency and for the benefit of all proceeding participants, at a minimum, Enbridge considers that the issuance of information requests should be identified in the Timetable of Events in relation to CER Act s.183 applications where process steps are outlined in a Hearing Order. Efforts to bundle information requests would also support regulatory efficiency and timely decision-making – Enbridge has experienced as many as four separate rounds of information requests from the CER in relation to a single CER Act s.214 application. One potential solution may be to include, where warranted, an information request-focused technical meeting such that clarifications could be made in an open forum to avoid

misunderstandings or misinterpretation of information leading to the need for further clarification efforts through written information requests – Enbridge notes that the Ontario Energy Board has broad authority to direct parties to participate in technical conferences.<sup>3</sup> Another efficiency initiative that the CER could consider is to establish a simplified process for expedited approval of extensions as needed to information request response deadlines.

Finally, Enbridge has recently observed that information requests issued by the CER related to applications, notifications, and compliance verification activities are being requested on increasingly short timeframes, frequently providing as few as five business days to respond. One week is an exceptionally short period of time to consider and respond thoughtfully to information requests. In the interests of procedural fairness, Enbridge considers that 7 business days should be the minimum time allowed to respond to an information request, with the period increasing in length depending on the number/complexity of requests received.

**Question 12:** *Can you identify rules of other regulators or tribunals that support efficiency and could inform the Commission's Review?*

Enbridge recommends several provisions of the MVLWB *Rules of Procedure Including Public Hearings*<sup>4</sup> to the CER as follows:

- Section 95 that expressly enables MVLWB to limit the issues it will consider at a Public Hearing – a provision of this nature would support efficiency and procedural fairness by enabling the CER to focus valuable hearing time and resources on unresolved issues within the CER's jurisdiction;
- Section 29 that expressly authorizes MVLWB to dismiss a Request for Ruling which, in MVLWB's view, is frivolous, vexatious, or an abuse of process;
- Section 53 that provides that late evidence will generally not be accepted by the MVLWB or considered in making decisions, and will not become part of the public record;
- Section 83 that enables MVLWB to direct persons or organizations with similar interests to make a joint intervention at a public hearing – this would support efficiency and competitiveness by streamlining hearing processes through elimination of duplicative interventions.

**Question 13:** *Do you have other feedback related to how the Commission can update the Rules to enhance competitiveness through predictable and timely processes?*

Understanding the timing of an application in all its stages is key to preparing project schedules and helps industry determine when facilities might be able to go into service to meet customer needs/requests. Predictability of infrastructure development timelines is critical to enhancing Canada's profile as an attractive investment jurisdiction. In conjunction with updating the Rules, the Lead Commissioner of the CER could further enhance transparency by establishing time limits for all types of applications, not just for applications filed pursuant to CER Act sections 183, 214 or 262. Similarly, the CER could establish service standards for all application types, and potentially reconsider the existing service standards to explore whether an even higher

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<sup>3</sup> *Ibid.*, at s.25.

<sup>4</sup> [https://mvlwb.com/sites/default/files/lwb\\_rules\\_of\\_procedure\\_-\\_dec\\_17\\_18.pdf](https://mvlwb.com/sites/default/files/lwb_rules_of_procedure_-_dec_17_18.pdf)

percentage of applications should be targeted for processing within the applicable published service standard periods.

***Discussion Paper Objective #3: Modernize practices and procedures***

**Question 14:** *Do you have feedback regarding the modernization of requirements to allow for electronic filing and service in most instances?*

Enbridge supports incorporation of allowance for electronic filing and service of documents in all instances – eliminating mandatory hard copy service requirements in Rule 8(9) would be efficient and not compromise participants' ability to fully participate in a matter. On request, participants may receive hearing orders or other critical CER communications in hard copy from applicants.

**Question 15:** *Do you have feedback regarding the potential removal of signature requirements in certain instances (e.g., physical signatures on applications and notice of motions)?*

Enbridge supports removal of signature requirements, and where signatures remain mandatory, that electronic signatures be used as opposed to digital signature tools like DocuSign.

**Question 16:** *Do you have feedback regarding removal of the current requirement for the company/applicant and the CER to have a hard copy of project applications on site for public inspection (Rules, s.24)?*

Much cost, effort and time is spent preparing and distributing hard copies of applications, and it is unclear how useful the practice is in the current digital age. Enbridge supports removal of the mandatory requirement that, where a hearing order has been issued, project application hard copies be on site for public inspection at the applicant's business address and at the CER library, although it is prepared to support placement of a hard copy in an accessible, public location in the local community at the request of a local community member. In Enbridge's experience, the majority of interested parties prefer to access application materials electronically.

**Question 17:** *Do you have feedback regarding what type of notice publication requirements are appropriate in a digital age and where commission approval is necessary?*

In directing publication of public hearing notices, Enbridge recommends the CER direct use of strategic, current publications, and require publication of notices in a manner that reflects the language of publication only – CER direction to publish French language notices intended for French-speaking audiences in English language publications (and vice versa) is costly, inefficient and unnecessary.

**Question 18:** *Do you have feedback related to how the Rules could better support accessibility to and throughout Commission processes?*

Enbridge recommends the CER consider making remote participation options available whenever possible to allow parties to monitor or participate in hearing sessions as an alternative to attending in person.

**Question 19:** *Do you have other feedback on how the Commission can update the Rules to modernize practices and procedures?*

Publication and distribution of company employee business contact information contained in materials submitted to the CER increases the risk of company employees being subjected to phishing and other cybersecurity threat activity. Enbridge recommends the CER consider whether company contact information may be substituted for individual contact information to minimize privacy and cybersecurity concerns, or provide guidance related to acceptable redactions.

Additionally, in Enbridge's experience, delays can arise due to translation requirements once a decision has been made. Particularly for highly time-sensitive applications such as leave to open and reactivation applications, Enbridge recommends the CER consider immediate publication of the decision in the language applied for and considered in, with translation to the other official language to follow and be published once available.

### ***Summary***

Changes proposed to the Rules should be focused on practice and procedure (as opposed to policy) and be specifically targeted to enhance efficiency, transparency, timeliness, flexibility and procedural fairness.

In the course of aligning the Rules with the CER Act, Enbridge recommends that the CER ensure that:

- Cost apportionment applications are brought before pipeline mitigation work is completed;
- Additional guidance be provided and process steps formalized for compensation and cost apportionment proceedings, including specific allowance for such hearings to be conducted through written processes;
- Indigenous knowledge is protected through use of flexible rules that allow Indigenous groups to choose what information to share with the Commission and how to share it, through processes and procedures that are clearly communicated and incorporate Indigenous cultural practices and procedures as appropriate; and
- CCC role and participation clarity is provided, although Enbridge recommends this occur outside of the Rules at this time.

In the context of enhancing competitiveness, Enbridge recommends that the CER:

- Reduce overlap and inefficient duplication between CER processes and processes of other regulators;
- Require adherence to established proceeding timelines by all proceeding participants absent material extenuating circumstances, incorporate the need for advance permission to late file and establish criteria for when timelines will be relaxed or adjusted;
- Incorporate notification and completeness decision processes and timelines, and timelines for all particularly time-sensitive applications;

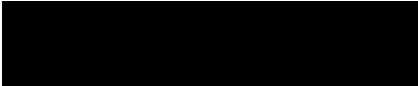
- Incorporate information request threshold criteria and reasonable response timelines; and
- Establish time limits and service standards for all types of CER applications.

In the context of modernization, Enbridge recommends expanding remote hearing participation opportunities and broad adoption of electronic filing, service and communication practices, including use of strategic and thoughtful publication requirements that minimize privacy and cybersecurity concerns.

Enbridge thanks the CER for this opportunity to provide input into the first phase of the Rules Review engagement process. We look forward to the CER's summary report of what the CER heard in phase one and gaining a better understanding of the views and interests of other participants. Enbridge looks forward to further discussion and welcomes any opportunity to answer questions, provide clarification or validate any inferences or conclusions drawn by the CER from the above submission.

For any clarifications, further discussion, and/or collaborative next steps, please contact the undersigned at the contact information provided, or Krista Hughes, Managing Legal Counsel, at (403) 718-3552 or the Enbridge Regulatory Affairs inbox at [Enbridge.Notifications@enbridge.com](mailto:Enbridge.Notifications@enbridge.com).

Sincerely,



Sarah McKenzie  
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