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Submitted via Email

Canada Energy Regulator
Suite 210, 517 Tenth Avenue SW
Calgary, Alberta T2R 0A8

**Attention: Rumu Sen
Regulatory Policy**

Dear Rumu Sen:

**Re: Canada Energy Regulator Review of the Rules of Practice and Procedure
Phase 1 Early Engagement
Comments from the TC Energy Pipelines**

On September 9, 2024, the Canada Energy Regulator (CER) launched a review of the Rules of Practice and Procedure (the Rules) where it sought feedback from Indigenous Peoples, landowners and stakeholders on potential amendment areas and improvements to the Rules.

Please find enclosed the joint responses and comments of TransCanada PipeLines Limited, NGTL GP Ltd., as general partner on behalf of NGTL Limited Partnership, Foothills Pipe Lines Ltd., Trans Québec & Maritimes Pipeline Inc., and Great Lakes Pipeline Canada Ltd., collectively referred to herein as the “TC Energy Pipelines”, on the questions and topics the CER raised in its Discussion Paper associated with this review.

We look forward to participating in the review of the Rules. Please contact me if the CER requires additional information with respect to this submission.

Yours truly,

**Foothills Pipe Lines Ltd.
Great Lakes Pipeline Canada Ltd.
NGTL GP Ltd., as general partner on behalf of NGTL Limited Partnership
TransCanada PipeLines Limited
Trans Québec & Maritimes Pipeline Inc.**

Original signed by

Matthew Wharton
Manager, Regulatory Tolls and Tariffs
Canadian Natural Gas Pipelines

Enclosure

| CER Discussion Paper Topic and Question | TC Energy Pipelines Comments and Responses |
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| <p>TOPIC: Align with the CER Act, including the objectives outlined in the Act’s preamble, such as the commitment to Reconciliation.</p> | |
| <p>1. Are there specific process steps for cost apportionment applications that you would like to see made mandatory through the Rules?</p> | <p>We support both maintaining the option of alternative dispute resolution (ADR) for cost apportionment matters, and prescribing in the amended Rules of Practice and Procedure (Rules) elements to be set out in a cost apportionment claim, e.g., the basis of the apportionment claim, such as whether the claimant alleges costs incurred for work activities were reasonable, whether the scope of the work was reasonable, or whether the sole basis for the claim is a public policy argument.</p> |
| <p>2. Are there specific process steps for compensation applications that you would like to see made mandatory through the Rules?</p> | <p>We suggest the Commission consider monetary thresholds when setting a process for compensation applications. For example, the Commission may want to consider a simplified process for smaller dollar value disputes to minimize cost and complexity for all parties.</p> |
| <p>3. Do you have feedback regarding how the Rules could incorporate process steps for providing and protecting Indigenous knowledge within hearings?</p> | <p>The Commission has information related to the protection of confidential Indigenous Knowledge posted on its website that appears practicable.¹ Details from these process steps could be included in an appropriate part of the Rules related to written or oral evidence, as applicable, to ensure recognition, respect and protection of the unique nature of Indigenous Knowledge.</p> <p>Specifically, regarding the sharing of Indigenous Knowledge in general, the Commission should consider including in the Rules the requirement for an Indigenous group to identify what information in a written submission and/or oral evidence is confidential Indigenous Knowledge, as well as what is propriety Indigenous Knowledge, so that it can be protected and handled properly. Adding such a provision to the Rules aligns with and supports Article 31 of the United Nations Declaration on the Rights of Indigenous Peoples Act (2021).</p> <p>In addition, to support transparency, we suggest the Commission consider including in the Rules or guidance a process step for where the Commission accepts Indigenous Knowledge on a confidential basis on the record of a proceeding and that the Commission place a general description of what aspect of an application the Commission considered the evidence relevant.</p> |

¹ <https://www.cer-rec.gc.ca/en/applications-hearings/submit-applications-documents/confidential-indigenous-knowledge.html>

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| <p>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?</p> | <p>Recent hearings have encountered significant delays, unanticipated additional process steps, and confusion due to a lack of clarity on the role of the Crown Consultation Coordinator (CCC) within, and participation in, Commission hearings. As such, we are of the view there is value in having the role of the CCC and the nature of its participation reflected in the Rules, including in relation to other intervenors in a proceeding, to ensure hearing processes are predictable, timely, transparent and procedurally fair.</p> <p>The Commission’s recent completeness determination letter for the Pouce Coupé Pipe Line Ltd. Taylor to Gordondale Pipeline Project provides some examples of the types of clarifications which could be worthwhile to reflect in the Rules.² For example, when the CCC is involved in a proceeding, ensuring that the CCC is included in the List of Participants for the hearing, and that the CCC may only file submissions on the hearing record in accordance with the Timetable of Events or by seeking the Commission’s leave in advance. It would also be useful to have a requirement for the CCC to clearly identify in its submissions the information which was received/heard directly from Indigenous groups, those portions which were reviewed and verified by Indigenous groups, and those portions which were drafted by the CCC and not reviewed by Indigenous groups.</p> |
| <p>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?</p> | <p>We recommend the inclusion of the definition of “Indigenous” in the Interpretation section of the Rules.</p> <p>We also recommend the Rules include how Indigenous Peoples identified on the Commission’s Crown Consultation list as potentially impacted by a project, and that register to participate as an intervenor, can be granted intervenor status if the process to do so is to be different from the process applicable to other parties. It would also be beneficial to the process to clarify that any hearing process steps that have already been completed will not be repeated in the event that late registrations are accepted.</p> |

² See Commission letter dated September 27, 2024 re: *Completeness determination, List of Participants, draft List of Issues, draft Timetable of Events, and comment process* under Proceeding OH-001-2024 (Filing ID: C31485-1, PDF pages 9-10 of 17).

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| <p>TOPIC: Enhance competitiveness through predictable and timely processes.</p> | |
| <p>6. Do you have any suggested changes to the Rules to reflect hearings pursuant to the <i>Canada Oil and Gas Operations Act</i> or other legislation?</p> | <p>We do not have any suggested changes to the Rules to reflect hearings pursuant to the <i>Canada Oil and Gas Operations Act</i> or other legislation.</p> |
| <p>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)?</p> | <p>Legislating a timeline and process (or both) for the determination of when an application is deemed complete by the Commission would increase certainty. e.g., a rule that the Commission shall issue a decision on completeness of an application within a set number of days from the date that the proponent has submitted the application. The set number of days could vary by application type (e.g., rates vs. facilities) or sub-type (e.g., category A, B, C facilities).</p> <p>For administrative simplicity, it would be advantageous for the Commission to incorporate provisions into the Rules that outline timelines and service standards for adjudicating applications. For facilities applications in particular, clarity on whether the service standard is based on the completeness determination, or another timeline, would provide certainty and predictability for all parties participating in a process.</p> <p>Additionally, it would be beneficial to simplify and incorporate clear rules of service with simplified timelines directly into the Rules rather than applying Federal Court Rules. Such changes would be particularly useful in the context of right of entry applications, and could include incorporating less stringent timelines for serving notices pursuant to Section 324(2) of the CER Act than those currently provided for under the Rules, and less stringent timelines for service of applications on landowners than currently stipulated under Section 55(2) of the Rules, which requires service on the same day. Our experience has shown this to be impractical, especially when the owners do not reside at the location, live outside Canada, etc.</p> <p>Additionally, it would be beneficial to establish clear guidelines on how electronic service can be utilized and formally accepted. We recommend a minimum of 72 hours or a reasonable timeframe be mandated.</p> |

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| | <p>For consideration, it may be advantageous to eliminate some specific timelines and instead provide clarity that the subsequent step in the process will commence once the service has been completed.</p> <p>Hardcopy service should only be mandated when a party expresses an inability to receive documents through electronic means.</p> <p>We are of the view parties should have the ability to opt-out of receiving notices when requested in cases where it would not compromise administrative fairness of a process.</p> |
| <p>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?</p> | <p>It would be helpful to expressly allow for the notice of motion process to be completed electronically in written form.</p> |
| <p>9. Do you have feedback on the current process for fixing costs related to detailed route hearings?</p> | <p>We do not have any comments on this topic.</p> |
| <p>10. Are there processes that you would like to see written into the Rules?</p> | <p>Please refer to our responses to other questions on process steps in this document.</p> |
| <p>11. Do you have feedback regarding changes that could be made to the information request process to clarify its use and support efficiency?</p> | <p>We encourage the Commission to make clear in the Rules, for the purposes of administrative fairness, that it will enforce the list of issues set out in the hearing process and limit any evidence or information requests to this list. To facilitate this, a party could be required to identify which item(s) on the list of issues their evidence and/or information requests pertain to.</p> |
| <p>12. Can you identify rules of other regulators or tribunals that support efficiency and could inform the Commission's Review?</p> | <p>We recommend the Commission consider the Alberta Surface Rights Board process for compensation evaluations for opportunities to streamline right of entry processes. Any process that allows parties to agree on the project/route, but disagree on compensation and have that discussion deferred (possibly to an adjudication process), while not delaying the progress of the project would be beneficial. The current process can cause disagreement about compensation to become adversarial which can create delays to project schedules and may impact trust between landowners, companies, and the CER process.</p> |

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| <p>13. Do you have other feedback related to how the Commission can update the Rules to enhance competitiveness through predictable and timely processes?</p> | <p>The Rules should be structured to ensure that timelines set out by the Commission are adhered to during a hearing process. The Rules should reflect clear timelines and thresholds of when those timelines will commence in a process letter or Hearing Order.</p> <p>Process efficiency can be increased significantly relative to the current process by not routinely accepting late filings, or extending processes based on commenter or intervenor requests for extensions of time. We recommend the Commission reduce the frequency of discretionary extension of hearing process deadlines, and more frequently deny requests for extensions of time or late acceptance of applications to participate to increase certainty of process and administrative fairness for all parties involved.</p> <p>Please also refer to the response to question 7.</p> |
| <p>TOPIC: Modernize practices and procedures.</p> | |
| <p>14. Do you have feedback regarding the modernization of requirements to allow for electronic filing and service in most instances?</p> | <p>We prefer modernizing the requirements to only require electronic filings and service and, to the extent possible, remove any requirements for hardcopy filings and service.</p> |
| <p>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)?</p> | <p>We support the removal of the requirement for signatures where the Commission determines appropriate.</p> |
| <p>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)?</p> | <p>We support the removal of this requirement for the purposes of cost and logistical efficiency. Please also refer to the response to question 14.</p> |
| <p>17. Do you have feedback regarding what type of notice publication requirements are appropriate in a digital age and where Commission approval is necessary?</p> | <p>We encourage the Commission to remove the requirement to publish all notices by default in printed newspapers and instead revise the requirement to being in digital form (i.e., without requiring Commission approval).</p> |

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| 18. Do you have feedback related to how the Rules could better support accessibility to and throughout Commission processes? | We do not have any comments on this topic. |
| 19. Do you have other feedback on how the Commission can update the Rules to modernize practices and procedures? | <p>We recommend implementing provisions in the Rules to protect landowner personal information from being publicly disclosed such as with right of entry applications, compensation hearings, detailed route hearings, etc.</p> <p>Where opportunities arise for a streamlined process, allow for right of entry applications to be evaluated in parallel with facility applications and decide awards concurrently.</p> |
| <p>TOPIC: Other Feedback</p> | |
| 20. Is there other feedback or suggestions you have related to the Rules Review? | We do not have any comments on this topic. |
| 21. Would you like to see guidance on any specific topic related to the Rules Review? | We do not have any comments on this topic. |