Canada Energy Regulator
Régie de l'énergie du Canada

Pipeline Financial Requirements Guidelines

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1. Introduction

1.1 Background

On 21 June 2019, the *Canadian Energy Regulator Act* (**CER Act**) received Royal Assent. On 8 August 2019, the Government of Canada announced that the CER Act would come into force on 28 August 2019 (commencement day) replacing the *National Energy Board Act*, which was repealed. The Canada Energy Regulator (**CER**), established under the CER Act, is Canada's federal energy regulator.

The CER Act imposes absolute liability and requires financial resources requirements for pipeline companies that are authorized under the CER Act to construct or operate a pipeline. Absolute Liability means that a company who is authorized to construct or operate a pipeline is liable for unintended or uncontrolled releases, without proof of fault or negligence, up to the limit of liability prescribed by the CER Act or regulations.

Paragraph 137(5)(a) of the CER Act states that a company that is authorized under the CER Act to construct or operate one or more pipelines that, individually or in the aggregate, has the capacity to transport at least 250,000 barrels of oil per day, is subject to an Absolute Liability limit of $1 billion (**Major Oil Pipelines**).[1]

The *Pipeline Financial Requirements Regulations* (**Regulations**) were published in the *Canada Gazette*, Part II, Volume 152, Number 14 on 11 July 2018, and came into force as of 11 July 2019. With the CER Act coming into force on 28 August 2019, the Regulations are deemed to have been made under the CER Act.[2]

Section 2 of the Regulations sets out the Absolute Liability limits for companies other than those operating Major Oil Pipelines. In addition, section 3 of the Regulations prescribes specific types of financial instruments from which the Commission must choose to order companies to maintain, and section 4 prescribes the proportion of financial resources that must be held in a form that is readily accessible to each company.

1.2 Purpose of the Pipeline Financial Requirements Guidelines

The Pipeline Financial Requirements Guidelines (**Guidelines**) provide details on how a pipeline company should demonstrate that it meets the financial resources requirements established in the CER Act and Regulations. Each company's information will be assessed on a case-by-case basis.

[1] Or greater amount if the Governor in Council, by regulation, on recommendation of the Minister of Energy and Natural Resources (**Minister**), prescribes. See paragraph 137(6)(a) of the CER Act.

[2] See paragraph 44(g) of the *Interpretation Act*.

These Guidelines may be amended from time to time by the CER as necessary. The Guidelines do not restate all of the particular requirements of the CER Act or Regulations and each company is responsible for ensuring familiarity and compliance with the statutory and regulatory requirements.

The Guidelines apply in a manner that is supplementary to the requirements of the CER Act and the Regulations. In the event of any inconsistency or discrepancy between the Guidelines and the CER Act and/or Regulations, the CER Act and Regulations will prevail over the Guidelines.

Neither the CER Act nor the Regulations provide authority to the Commission to grant exemptions from Absolute Liability provisions of the CER Act and Regulations, to lower Absolute Liability limits, introduce new Absolute Liability Classes, or to accept lower amounts of financial resources that companies must maintain. Absolute Liability limits may only be changed by the Governor in Council, on the Minister of Energy and Natural Resources' (**Minister**) recommendation.

2. Financial Requirements Overview

The CER Act states in section 136 that the purpose of sections 137 to 142 is to reinforce the "polluter pays" principle by, among other things, imposing financial requirements on any company that is authorized under the CER Act to construct or operate a pipeline.

Each company must maintain financial resources equal to its Absolute Liability limit, or a greater amount if specified by the Commission. In the event of an unintended or uncontrolled release, the company must respond appropriately, contain the incident, and pay out all claims as appropriate.

If a company does not comply with an order of the Commission in respect of any action or measure to be taken in relation to such a release, or if the Governor in Council is of the opinion that the company does not have or is not likely to have the financial resources necessary to pay for the costs incurred or to be incurred in relation to a release, and any compensation that might be awarded for compensable damage caused by the release, then the Governor in Council as per section 141(2) may designate a company pursuant to subsection 141(1) of the CER Act. Upon such a designation, the CER may take any action or measure considered necessary in relation to the release and may authorize a third party to take any such action or measure.

(a) Definitions/ Interpretation

Absolute Liability - The CER Act states that if an unintended or uncontrolled release of Oil, Gas or any other commodity from a pipeline occurs, the Company that is Authorized under the CER Act to construct or operate that pipeline is liable, without proof of fault or negligence, up to the Absolute Liability limit that applies to it.

This means that Companies are liable, regardless of negligence or fault, for losses or damages resulting from an unintended or uncontrolled release up to certain specified limits. This is known as *Absolute Liability*. The Absolute Liability limit is defined in the Major Oil Pipelines, and in the Regulations for all other CER-regulated pipelines.

Absolute Liability Class – The CER Act establishes an Absolute Liability limit of one billion dollars for Companies Authorized to construct or operate one or more pipeline(s) that individually or in the aggregate have the Capacity to transport at least 250 000 barrels of Oil per day. The Regulations establish classes, Absolute Liability limits and financial resources requirements for other- Companies.

Authorized – In the Regulations, **authorized**, in respect of a pipeline, describes a pipeline whose construction and operation have been authorized under Part III of the Act, but not:

(a) a pipeline whose construction has not begun or a pipeline under construction that does not contain any commodity;

(b) a pipeline that, by order of the Commission, has been deactivated[3] or decommissioned;

or,

(c) a pipeline that, with leave of the Commission, has been abandoned.

This means that the Commission does not require Companies to maintain Financial Resources under the Financial Resources provisions of the CER Act and Regulations in respect of pipelines as described in the above paragraphs (a), (b), or (c).

Capacity – means a pipeline's maximum daily capacity assuming the pipeline(s) is (are) operating at 100% of design specifications. Capacity will account for all CER authorized facility additions, removals, decommissionings, and deactivations.

CER Act – *Canadian Energy Regulator Act*

Company (or Authorization Holder)– Section 136, subsections 137(3), 137(4), and 138(1) all refer to a "company that is Authorized under this [CER] Act to construct or operate a [the] pipeline". Paragraph 137(5)(a) refers to a "company that is Authorized under this [CER] Act to construct or operate one or more pipelines", and paragraph 137(5)(b) refers to a "company that is Authorized under this [CER] Act to construct or operate any other pipeline". The CER Act defines company as including:

[3] For more details about operating, deactivating, decommissioning and abandonment of CER-regulated pipelines, see sections 1, 44, 45.1, and 50 of the *National Energy Board Onshore Pipeline Regulations* and subsection 241(1) of the CER Act.

(a) a person having authority under a Special Act to construct or operate a pipeline, and,

(b) a body corporate incorporated or continued under the *Canada Business Corporations Act* or an Act of the legislature of a province and not discontinued under the Act in question;

Accordingly, a "company" to which the Financial Resources provisions of the CER Act and the Regulations apply is a company is authorized under the CER Act to construct and operate a pipeline (and not a parent or affiliate company).

Financial Resources - The CER Act requires a Company Authorized to construct or operate a pipeline to maintain the amount of Financial Resources necessary to pay the applicable Absolute Liability limit that applies to it or, if the Commission specifies a greater amount, that amount.

Subsection 138(2) of the CER Act authorizes the Commission, if it chooses to do so, to order a Company to maintain the required Financial Resources in one or more specific types of Financial Resources.

Funds that are set aside or allocated for abandonment funding, such as funds in trust, letters of credit, or surety bonds, cannot be used to respond to an incident. Accordingly, these abandonment funds do not form part of a Company's balance in maintaining Financial Resources pursuant to subsection 138(1) of the CER Act.

Financial Resources Plan – A set of filings provided by a Company to satisfy the Commission that the Company meets the requirement to maintain the amount of Financial Resources necessary to pay its Absolute Liability limit.

Financial Resources Requirements established in the CER Act and the Regulations – for the purposes of these Guidelines, this term refers to Sections 136, 137, 138, and 139 of the CER Act, and the entirety of the Regulations.

Gas – The CER Act defines gas as:

(a) any hydrocarbon or mixture of hydrocarbons that, at a temperature of 15°C and a pressure of 101.325 kPa, is in a gaseous state, or,

(b) any substance designated as a gas product by regulations made under section 390.

Guidelines – these Pipeline Financial Requirements Guidelines, the purpose of which is to provide further details on how a pipeline Company should demonstrate that it meets the Financial Resources Requirements established in the CER Act and the Regulations.

Major Oil Pipeline – The CER Act sets out the Absolute Liability limit of $1 billion for pipeline Companies with the Capacity to transport greater than 250,000 barrels of Oil per day. These Companies are referred to as Major Oil Pipeline Companies throughout these Guidelines.

Natural Gas Liquids (**NGLs**) – the Financial Resource Requirements established in the CER Act and the Regulations do not set out Absolute Liability classes specifically for NGL pipelines. Accordingly, all pipeline Companies transporting **NGL** hydrocarbons will be treated by the Commission as either Oil pipelines or Gas pipelines, depending on the product(s) they are authorized to transport, as explained further in section 3.3(b) of these Guidelines below, and the Regulations.

Non-Major Oil Pipeline – The Regulations set out Absolute Liability levels for all Companies authorized to construct or operate a pipeline and that do not meet the definition of a Major Oil Pipeline. Absolute liability levels for Non-Major Oil Pipelines are based on Capacity (for Oil pipeline Companies), Risk Value (for Gas pipeline Companies) and commodity type transported and terrain traversed for other commodity pipeline Companies.

Oil – The CER Act defines oil as

(a) any hydrocarbon or mixture of hydrocarbons other than gas, or,

(b) any substance designated as an oil product by regulations made under section 390;

Readily Accessible Portion - The CER Act and Regulations state that the Commission may order a Company to maintain Financial Resources, including in readily accessible form(s).[4] The Regulations set out minimum amounts of Financial Resources that must be readily accessible to a Company, and set out the specific types of readily accessible Financial Resources a Company could be ordered by the Commission to maintain.

Regulations – means the *Pipeline Financial Requirements Regulations.*

Risk Value – the Risk Value for a Gas pipeline Company is calculated by multiplying the square of the pipeline's maximum outside diameter, measured in millimetres, by the maximum operating pressure approved by the Commission, measured in megapascals, and, if the Company operates two or more Gas pipelines, the Risk Value is that of the pipeline with the highest Risk Value.

[4] See section 138 of the CER Act and section 4 of the Regulations.

3. Determining Absolute Liability Class

CER-regulated Companies are subject to the Absolute Liability provisions of the CER Act and Regulations. The Absolute Liability limits are determined based on various criteria that place Companies into certain classes. The following section highlights some key features of the CER Act and Regulations and provides guidance in terms of how a Company can calculate its respective Absolute Liability Class.

3.1 Absolute Liability Limits

The CER Act sets out that the Absolute Liability limit for Major Oil Pipeline Companies is $1 billion.

The Regulations set out the Absolute Liability limits for all other classes of Companies as follows:

- **Oil Class 2 - $300,000,000** for a Company that operates one or more Authorized Oil pipelines that individually or in the aggregate have the Capacity to transport at least 50,000, but fewer than 250,000, barrels of Oil per day;
- **Oil Class 3 - $200,000,000**, for a Company that operates one or more Authorized Oil pipelines that individually or in the aggregate have the Capacity to transport at least one, but fewer than 50,000, barrels of Oil per day;
- **Gas Class 1 - $200,000,000**, for a Company that operates one or more Authorized Gas pipelines whose Risk Value is at least 1,000,000;
- **Gas Class 2 - $50,000,000**, for a Company that operates one or more Authorized Gas pipelines whose Risk Value is at least 100,000 but less than 1,000,000;
- **Gas Class 3 - $50,000,000**, for a Company that operates one or more Authorized Gas pipelines whose Risk Value is at least 15,000 but less than 100,000;
- **Gas Class 4 - $10,000,000** for a Company that operates one or more Authorized Gas pipelines whose Risk Value is at least one but less than 15,000;
- **Other Commodity Class 1 - $10,000,000** for a Company that operates one or more Authorized pipelines that transport a commodity — other than Oil, Gas, carbon dioxide or water — in a liquid state by land or in a liquid or semi-solid state across a watercourse;
- **Other Commodity Class 2 - $5,000,000** for a Company that operates one or more Authorized pipelines that transport a commodity — other than Oil, Gas, carbon dioxide or water — in a gaseous or semi-solid state by land or in a gaseous state across a watercourse;

- **CO_2 or Water Class - $5,000,000** for a Company that operates one or more Authorized pipelines that transport carbon dioxide or water.

3.2 Companies Operating Multiple Pipelines or Shipping Multiple Commodities

The Financial Resources Requirements established in the CER Act and Regulations apply to Companies, not individual pipelines. Some Companies are authorized to construct and/or operate multiple pipelines, sometimes even with different products in each pipeline (i.e., batches of crude, NGLs). Accordingly, the Regulations provide:

- If a Company operates **an Authorized pipeline that transports two or more commodities**, the Absolute Liability limit is determined as if the Company were transporting only the commodity that results in the highest Absolute Liability limit.
- If a Company operates an Authorized pipeline that transports **two or more varieties of the same commodity**, the Absolute Liability limit applicable to the Company is determined in accordance with paragraph 137(5)(a) of the CER Act and subsection 2(1) of the Regulations as if the Company were transporting only the variety that results in the highest Absolute Liability limit.
- If a Company operates **two or more Authorized pipelines that are unconnected and transport different commodities**, the Absolute Liability limit is determined as if the Company were operating only the pipeline that results in the highest Absolute Liability limit.

3.3 Operational & Design Factors

(a) Oil Pipelines

The CER Act and Regulations set out classes of liability based on Capacity for Companies that are Authorized to construct or operate one or more pipelines that individually or in the aggregate have the capacity to transport Oil.

As noted in the definitions section above, to determine Capacity, the Commission will rely on the Capacity assuming the Commission-approved design of the pipeline. This means that, for the purposes of determining Absolute Liability, the Commission will consider Capacity to be a pipeline's maximum daily Capacity assuming the pipeline(s) is (are) operating at 100% of design specifications. Capacity will account for all Commission-approved facility additions, removals, decommissionings, abandonments and deactivations.

Available capacity, average throughput, or maximum throughput over a given time period, will not be relied upon as measures of Capacity. The capacity resulting from voluntary, temporary, or Commission-mandated pressure or flow restrictions will not determine Capacity for the purposes of determining Absolute Liability Class.

For Companies Authorized to construct or operate two or more unconnected Oil pipelines, the cumulative Commission-approved Capacity of those pipelines will be used to determine the Company's Absolute Liability level. For example, if a Company has two Oil pipelines, each with 150,000 barrels per day of Capacity, the Company in the aggregate has the Capacity to transport 300,000 barrels per day, and its Absolute Liability limit would be $1 billion. Where a Company operates an oil pipeline system of two or more connected lines, the highest Capacity within the system will be used to determine the Absolute Liability limit.

(b) Natural Gas Liquids Pipelines

Pipelines that are Authorized to transport NGLs that do not meet the definition of Gas will be considered Oil pipelines for the purposes of the Financial Resources Requirements established in the CER Act and Regulations. In other words, Companies that are Authorized to transport NGLs that at a temperature of 15°C and a pressure of 101.325 kPa, are in a liquid state, will be treated as Oil pipeline Companies.

If Schedule A of a Company's certificate or order authorizes it to transport "NGLs" generally – without specifying the types of NGLs – or any NGLs that meet the definition of "Oil" in the CER Act, then the Oil Absolute Liability limits apply.

If Schedule A of a Company's certificate or order only authorizes the transport of NGLs that meet the definition of "Gas" under the CER Act, then the Gas Absolute Liability limits apply. The Company is responsible for providing evidence that the NGLs it is Authorized to transport meet the definition of Gas in the CER Act.

A Company may file an application with the CER, pursuant to section 69 of the CER Act, to vary Schedule A of its certificate or order to more accurately reflect the product it transports.

(c) Gas Pipelines

For Gas pipelines, the Absolute Liability level will be determined based on Risk Value. If the Company operates two or more Gas pipelines, then the Risk Value is that of the pipeline with the highest Risk Value.

The Risk Value is calculated based on the Commission-approved maximum operating pressure, and maximum outside diameter on a pipeline or pipeline system. For purposes of determining Risk Value for a given pipeline, only Commission-authorized facility additions, removals, decommissionings, abandonments, and deactivations should be taken into account. Operational pressure, average pressure, or pressure taking into consideration voluntary, temporary, or Commission-directed pressure or flow restrictions will not be relied on as a basis to determine Risk Value for the Absolute Liability Class.

Risk Value is not “additive” in the same way Capacity is additive in determining the Absolute Liability Class for a Company that operates multiple Oil pipelines. If a Company operates multiple Gas pipelines, its Absolute Liability Class is determined based on its Gas pipeline with the highest Risk Value.

(d) Other Commodity

For pipelines that ship products not meeting the definition of Oil or Gas, the other commodity Absolute Liability Classes apply. The Company is responsible for providing evidence of the commodity it transports.

(e) Changes to Pipeline Capacity or Risk Value

Given that pipelines may go through design changes throughout their lifecycle which impact Capacity or Risk Value, Company Absolute Liability Classes may change accordingly. For example, a pipeline under construction would not be subject to Absolute Liability until such time as the pipeline contained a commodity, at which point the Company would be subject to Absolute Liability as per its Absolute Liability Class. Throughout the Company’s lifecycle, facility additions, acquisitions, and/or design changes may result in an increase in a Company’s Absolute Liability Class, while deactivations, decommissionings, asset sales, and abandonment may result in a decrease in a Company’s Absolute Liability Class.

Practically, a pipeline Company may modify, decommission, abandon, or deactivate facilities, which could reduce the pipeline’s Capacity or Risk Value to the point where the pipeline would be classified in a lower Absolute Liability Class. For example, an Oil pipeline Company may apply for and receive approval to abandon a pump station, the effect of which could be to reduce its Capacity from 55,000 barrels per day to 40,000 barrels per day.

A Company must file an application with the CER explicitly to have its Absolute Liability Class lowered, providing sufficient evidence to the Commission detailing the impacts of the modification, so that the Commission can decide whether to approve a decrease in the Company’s Absolute Liability Class. If the Commission approves the lowering of the Company’s Absolute Liability Class, the change to Absolute Liability Class would become effective once the applied-for changes to a Company’s system had been physically completed in accordance with any Commission requirements and conditions. The Commission will only consider facility changes that have been approved by the Commission when calculating a Company’s Capacity or Risk Value. Accordingly, reduced throughput levels, voluntary pressure restrictions, and other facility changes for which no Commission approval has been granted will not be used in assessing a Company’s Absolute Liability Class. In addition, Commission-directed pressure or flow restrictions will not affect a Company’s Absolute Liability Class.

4. Financial Resources Plan

A Company must maintain the amount of Financial Resources necessary to pay the Absolute Liability limit that applies to it or the amount specified by the Commission. Each pipeline Company must satisfy the Commission that it meets the requirement to maintain Financial Resources and complies with any Commission order specifying the type of Financial Resources it must maintain.

Pursuant to subsection 138(3) of the CER Act, Companies are required to satisfy the Commission that their Financial Resources meet the requirements of the CER Act and Regulations. To do this, every Company must file a Financial Resources Plan with the CER, and annual compliance filings. The section below provides the expectations for filing a Financial Resources Plan, as well as the details for annual compliance filings.

The Commission will review a Company's Financial Resources Plan and it may order a Company to maintain certain financial resource types, in certain amounts. The process will work as follows:

4.1 Financial Resources Plan Contents

Pursuant to subsection 138(3) of the CER Act, Companies must satisfy the Commission that they meet the requirements in the CER Act and Regulations. This must be done through the filing of a Financial Resources Plan with the CER, detailing how the Company's Financial Resources meet the Financial Resource Requirements established in the CER Act and Regulations. The Financial Resources Plan should:

- Explain how the Financial Resources a Company maintains enable it to respond to a release;
- Detail all types of Financial Resources available to it, and amounts of each type;
- Detail the key terms of each financial resource or financial instrument available;
- Describe the timing of access for each financial resource; and,
- Demonstrate how the Financial Resources maintained allow it to pay the amount of Absolute Liability applicable, or a greater amount if specified by the Commission.

Companies may apply to treat a portion or all of their Financial Resource Plan filing as confidential, pursuant to section 60 of the CER Act. For further details on how to make such a filing, see section 1.5 of the Filing Manual. The Commission will assess any such requests on a case-by-case basis.

The Financial Resources Plan should explain whether the Financial Resources are directly held at the Company or Authorization holder level (e.g., cash on hand, or undrawn credit lines at the authorization holder level), at an affiliate level (e.g., lines of credit or commercial paper programs of a parent Company), or whether the resources are contingent and provided from a third party (e.g.,

insurance). For any non-directly held resources, the Financial Resources Plan should detail whether access is at the Company’s sole discretion, or if it is encumbered, and if so, how.

The Financial Resources Plan should provide rationale detailing why the Financial Resources are sufficient to pay the Absolute Liability limit applicable to a Company and include a description of the timing of mobilization of funds, including the length of time it would take to access funds equal to the full Absolute Liability limit applicable to the Company.

Companies are not limited to the prescribed list of Financial Resource types listed in section 3 of the Regulations. Companies may have other Financial Resource types that could be suitable for release response measures. If Companies include Financial Resources outside of the prescribed list in section 3 of the Regulations, they should provide rationale to explain why these other types are suitable.

Funds that are set aside or allocated for abandonment funding, such as funds in trust, letters of credit, or surety bonds, cannot be used to respond to a release. Accordingly, these cannot form part of a Company’s Financial Resources Plan.

The Financial Resources Plan should include a completed table, as follows:

Table 1: Financial Resources Plan

Authorization Holder Name:				
Capacity/Risk Value:				
Absolute Liability Limit:				
$ 000's CAD (as at most recent year-end Audited Financial Statements[5])	**Parent Company, if Applicable[6]**	**Authorization Holder**	**Total**	**Timing of Access (business days)**
Cash				
Lines of Credit (undrawn portion)				
Commercial Paper (undrawn portion of program)				
Other Short-Term Resources (explain)[7]				
Total short-term, accessible within five (5) business days				
Insurance				
Surety Bonds				
Parent/Affiliate Guarantees (from Parent Co. to Authorization Holder)				
Other Financial Resources (explain)				
Total Other				

5 For companies that do not produce audited financial statements, unaudited information may be acceptable, provided that the Commission is satisfied with the Company's rationale as to why audited financial statements are unavailable (e.g., audited statements may only be produced at a parent company corporate level).

6 Use separate column for each relevant parent/affiliate.

7 Add rows as required for each unique type of Financial Resource.

4.2 Corporate Structure Considerations

Subsection 138(1) of the Act stipulates that "**a Company that is Authorized under this [CER] Act** to construct or operate a pipeline must maintain […] Financial Resources". Accordingly, the Commission will not rely on Financial Resources of a parent or affiliate as a demonstration of "maintaining" Financial Resources at the operating Company level, absent a parental/affiliate guarantee, a line of credit with a parent/affiliate guarantor, or some other instrument or mechanism providing direct, unencumbered access to those parent company financial resources at the authorization holder Company's sole discretion.

For any Financial Resources Plan that intends to place reliance on the financial resources of a parent or affiliate, a detailed corporate structure diagram must be provided. Additionally, a description of the mechanism or instrument that provides access to parent/affiliate funds (such as a letter of guarantee or line of credit), as well as a copy of the instrument, must be provided.

The Commission notes that some Companies may be a "named beneficiary" or a "named insured" on broad, corporate-wide insurance policies. As long as the Company is a named insured or named beneficiary, the Commission will consider the insurance coverage as part of a Financial Resources Plan, to the extent the Company has coverage under the policy.

4.3 Sole Reliance on Insurance

If a Company plans to rely only on insurance to demonstrate Financial Resources (other than for readily accessible financial resources, as described in the next section), then it should explain how it can fund initial release response measures in a timely manner. A Company should also describe the potential steps necessary to fund release response measures and the timelines for each step, including for insurance claims to be submitted, processed, and paid. The Commission expects companies to take into consideration the timing of access for various types of resources, such as cash on hand, internal resources, credit lines, insurance and any other financial resources, and ensure the timing is aligned with the expected timing of expenses in the event of a release.

Further, if a Company chooses to place a high degree of reliance on insurance as part of its Financial Resources Plan (for example, >50% of its financial resources being composed of insurance), the Commission would expect the Company to further justify this approach in part by describing its risk, operating characteristics, and potential exposure to sudden financial resource draws in the event of a release. The Commission will review each Financial Resources Plan on a case-by-case basis.

4.4 Readily Accessible Resources

The Regulations stipulate that a Company that operates one or more Authorized pipelines referred to in paragraphs 2(1)(a) to (d) must maintain at least 5% of the amount of Financial Resources referred to in subsection 138(1) of the CER Act in types that are readily accessible. A Company that operates one or more Authorized pipelines referred to in paragraphs 2(1)(e) to (i) must maintain at least 2.5% of the amount of Financial Resources referred to in subsection 138(1)of the CER Act in types that are readily accessible. Should the Commission direct companies to maintain financial resources in readily accessible types, the types it can direct include: letters of credit; lines of credit; participation in a pooled fund, as referred to in subsection 139(1) of the CER Act; and, cash or cash equivalents.

These funds must be accessible within five (5) business days.

Accordingly, the readily accessible requirement is as follows, based on each Company's Absolute Liability Class:

Table 2: Readily Accessible Resource Levels

Commodity:	**Company Absolute Liability Class:**	**Absolute Liability Limit:**	**Readily Accessible Resource Level:**
Oil	Oil Class 1: a Company that is Authorized to construct or operate one or more pipelines that individually or in the aggregate have the Capacity to transport at least 250,000 barrels of Oil per day;	$1,000,000,000	**Not Specified**
Oil	Oil Class 2: a Company that operates one or more Authorized Oil pipelines that individually or in the aggregate have the Capacity to transport at least 50,000, but fewer than 250,000, barrels of Oil per day;	$300,000,000	**$15,000,000**
Oil	Oil Class 3: a Company that operates one or more Authorized Oil pipelines that individually or in the aggregate have the Capacity to transport at least one, but fewer than 50,000, barrels of Oil per day;	$200,000,000	**$10,000,000**
Gas	Gas Class 1: a Company that operates one or more Authorized Gas pipelines whose Risk Value is at least 1,000,000;	$200,000,000	**$10,000,000**
Gas	Gas Class 2: a Company that operates one or more Authorized Gas pipelines whose Risk Value is at least 100,000 but less than 1,000,000;	$50,000,000	**$2,500,000**
Gas	Gas Class 3: a Company that operates one or more Authorized Gas pipelines whose Risk Value is at least 15,000 but less than 100,000;	$50,000,000	**$1,250,000**
Gas	Gas Class 4: a Company that operates one or more Authorized Gas pipelines whose Risk Value is at least one but less than 15,000;	$10,000,000	**$250,000**
Other commodity	Other Commodity Class 1: a Company that operates one or more Authorized pipelines that transport a commodity — other than Oil, Gas, carbon dioxide or water — in a liquid state by land or in a liquid or semi-solid state across a watercourse;	$10,000,000	**$250,000**
Other commodity	Other Commodity Class 2: a Company that operates one or more Authorized pipelines that transport a commodity — other than Oil, Gas, carbon dioxide or water — in a gaseous or semi-solid state by land or in a gaseous state across a watercourse;	$5,000,000	**$125,000**
CO_2 or Water	CO_2 or Water Class: a Company that operates one or more Authorized pipelines that transport carbon dioxide or water.	$5,000,000	**$125,000**

5. Commission-Directed Financial Resources

If the Commission is not satisfied with a pipeline Company's Financial Resources Plan, if a Company does not submit a Financial Resources Plan, or if the Commission is otherwise of the view that direction is required, the Commission may direct a Company to maintain Financial Resources in certain types[8] and in certain amounts of each type.

This may be necessary for various reasons, including but not limited to:

- A Company's Financial Resources do not meet the minimum amount (i.e. Absolute Liability amount, or higher if directed) set out by the CER Act or Regulations;
- A Company's Financial Resources do not include sufficient readily accessible funds, the levels of which are established by the Commission or in the Regulations;
- A Company's Financial Resources available for spill response are reliant on Financial Resources of a parent/affiliate, to which the Company does not have direct, unencumbered or guaranteed access; or,
- A Company's Financial Resources Plan is too heavily reliant on contingent resources of a third party, (e.g. sole reliance on insurance, with no internal financial means to respond to an incident prior to availability of insurance proceeds).

6. Increasing of Financial Requirements

The Commission has no authority to increase Absolute Liability limits. Absolute Liability limits are set out in the CER Act and Regulations. The CER Act states that the Governor in Council may, by regulation, on the Minister's recommendation, prescribe an amount greater than one billion dollars for Major Oil Pipeline Companies, and prescribe Absolute Liability limits for all Non -Major Oil Pipeline Companies.

However, the Commission does have the discretion, pursuant to subsection 138(1) of the CER Act, to require a Company to maintain Financial Resources in an amount greater than its corresponding Absolute Liability amount. The Commission may exercise this discretion on a case-by-case basis.

7. Types of Financial Resources

7.1 Overview

Subsection 138(2) of the CER Act indicates that the Commission may order a Company, or as a member of a class of Companies, to maintain Financial Resources in certain types, and in certain amounts of each type. The Regulations prescribe a list of financial resource types, and a list of readily accessible types, from which the Commission may choose to direct Companies to maintain.

The financial resource types are prescribed via the Regulations as follows:

- Insurance policy;
- Escrow agreement;
- Letter of credit;
- Line of credit;
- Participation in a pooled fund, as referred to in subsection 139(1) of the CER Act;
- Parent company guarantees;

[8] Set out in Section 3 of the Regulations.

- Surety bond or pledge agreement, or indemnity bond or suretyship agreement; and,
- Cash or cash equivalents.

The Regulations set out that a Company must maintain certain minimum amounts of Financial Resources in a form that is readily accessible to the Company, as reiterated in Table 2 above. The financial instruments the Commission could order a Company to use are set out in the Regulations and would be one or more of the following for the purposes of the Readily Accessible Portion:

- Letter of credit;
- Line of credit;
- Participation in a pooled fund referred to in the CER Act; and,
- Cash or cash equivalents.

7.2 Financial Resource Attributes

If any of the following financial resource types are relied upon by a Company as part of its Financial Resources Plan, or in the event the Commission directs a Company to maintain any of the following financial resource types, the Financial Resources should contain the following attributes:

(a) Insurance

Any Company relying on insurance to satisfy its requirement to maintain Financial Resources should have policies in place with conditions suitable to cover the scope of operations of the Company, and applicable to the exposures involved in its activities. A Company relying on insurance must provide a certificate of insurance, containing an overview of its insurance policies, detailing at a minimum:

- Coverage/policy types, and limits of each policy type;
- Deductible amounts, per incident and policy type;
- A list of insured parties under the policy(ies);
- Effective date(s) and expiry date(s); and,
- The insurance providers, and the providers' respective A.M. Best Ratings (or equivalent).

The Company shall submit updated certificates of insurance pursuant to any subsequent renewals of the insurance policy(ies) on an annual basis to the CER, as part of its annual compliance filing detailed in section 8 of these Guidelines, below.

Should notice of cancellation of insurance be issued by insurers, the Company shall act to remove the reason for cancellation, or shall act immediately to obtain alternative insurance, and shall inform the Commission of the actions taken to this end.

(b) Escrow Agreement

The Commission may direct a Company to establish an escrow agreement with an escrow agent mutually acceptable to the Commission and the Company. Such an agreement would acknowledge receipt of the requisite amount of Financial Resources that would be established in an escrow fund. The escrow fund would be managed and governed in accordance with the terms and conditions of the escrow agreement.

(c) Letter of Credit

The Commission would expect that for a letter of credit to be satisfactory, it would meet the following criteria:

- Beneficiary: The beneficiary must be identified as “His Majesty the King in Right of Canada as represented by the Canadian Energy Regulator or any successor administrative body”.
- Duration: automatically renew on an annual basis without notice or amendment, and without a maximum number of renewals.
- Issuer: The issuer of the letter of credit must be a Canadian chartered bank set out in Schedule I of the *Bank Act*.
- Access to Funds: The full amount of the letter of credit must be payable within five (5) days to the beneficiary on demand upon presentation of the letter of credit at the bank’s main branch in Calgary (or via other means of presentation as agreed to by the Canadian Energy Regulator or any successor administrative body).
- Notification: The beneficiary must be notified by the Issuer by way of courier or registered mail at least sixty (60) days before the letter of credit may be cancelled, not renewed or expires. Upon notification, the beneficiary must be entitled to draw the entire amount of the letter of credit.
- Additional terms: The letter of credit must be irrevocable, non-transferable and non--assignable.
- Security: The letter of credit should indicate whether it is secured or not.

The Commission may provide further guidance or direction as necessary.

(d) Line of Credit

Lines of credit from a financial institution meeting the following minimum requirements may be satisfactory:

- Issued by a bank acceptable to the Commission;
- Be explicit as to the amount of Financial Resources covered;
- Provide the Company with funds on demand; and,
- Be accompanied by a description of the structure (and balance) of the line of credit including notice of cancellation, secured/unsecured, total amount, undrawn portion.

The Commission will only rely on the undrawn portion of a line of credit in consideration of the sum of Financial Resources a Company is maintaining. The Commission may direct Companies to report if the undrawn portion of a credit line drops below a certain threshold, as required. The Commission may also direct Companies to report if the Line of Credit is terminated, modified or amended.

The Commission has also approved lines of credit from parent companies/affiliates as acceptable Financial Resources, with the following attributes:

- Provides the Company with funds on demand and at its sole discretion;
- Provides funds within five (5) business days of written demand from the Company;
- Non-transferrable and non-assignable, except with prior written approval of the Commission or any successor administrative body;
- Does not allow termination, amendment, or modification, except with prior written approval of the Commission or any successor administrative body;
- Contains explicit provision to notify the Commission or any successor administrative body in writing of any event of default, within two (2) business days of the guarantor or Company’s knowledge of default; and,
- Automatically renews and remains in force unless the Commission or any successor administrative body has granted approval of alternative types of Financial Resources.

(e) Participation in a Pooled Fund

A Company may provide proof of its participation in a pooled fund to maintain Financial Resources. In the event a Company participates in a pooled fund, it must meet the requirements set out in section 5 of the Regulations.

Furthermore, the Commission would expect that for a pooled fund to be satisfactory:

- Funds must be maintained in a segregated account and not be commingled with fund participants' general funds;
- The administrator of the fund must be an independent, third party acceptable to the Commission or any successor administrative body;
- Funds must be protected from creditors;
- Funds must be protected from misuse or use for a purpose other than responding to a release;
- The pooled fund shall only be used for the purpose of meeting the Financial Resources requirements and shall not otherwise be encumbered; and,
- Funds must be liquid and payable to the Canadian Energy Regulator or any successor administrative body within five (5) days of the Commission's demand.

The Commission would likely require that it review the terms on which any pooled fund is created and administered. After such a review, the Commission may provide further guidance or direction as necessary and/or provide its approval

(f) Parent Company Guarantee

A parental guarantee agreement must provide proof that there are sufficient funds at a parent company level to cover the Financial Resources for its CER-regulated Company. This parental guarantee agreement must be accompanied by the most recent audited financial statements of the parent company, as well as any subsequently completed unaudited quarterly statements and, if available, the most recent credit rating reports from the guarantor. The Financial Resources of the parent company will only be relied on for the amount of the guarantee agreement.

Furthermore, the guarantee should:

- Provide the Authorization holder with unconditional, on-demand access to funds;
- Specify the amount of the funds being guaranteed for the purpose of the Financial Resource Requirements established in the CER Act and Regulations;
- Provide funds within five (5) business days of written demand from the Company;
- Be irrevocable, non-transferrable and non-assignable, except with prior written approval of the Commission or any successor administrative body;
- Not allow termination, amendment, or modification, except with prior written approval of the Commission or any successor administrative body;
- Automatically renew and/or remain in force unless the Commission or any successor administrative body has granted approval of alternative types of Financial Resources; and,
- Require that in the event of default of either the guarantor or the Company, the Commission or any successor administrative body be served notice of default within two (2) business days.

(g) Surety Bond or Pledge Agreement, or Indemnity Bond or Suretyship Agreement

The Commission may consider a surety bond as proof of Financial Resources subject to the surety bond having terms as follows:

- The surety must be regulated by the Office of the Superintendent of Financial Institutions;
- The obligee must be the "His Majesty the King in Right of Canada as represented by the Canadian Energy Regulator or any successor administrative body";
- The term of the bond must be indefinite. The bond may have a form of evergreen provision that automatically renews the bond unless notice of termination is given;
- The bond must be terminable by the surety providing sixty (60) days' notice, with the obligee then having a further sixty (60) day period to make a written demand of the surety;
- The bond must be structured as an on demand instrument. This may be accomplished by requiring the surety to pay the bond amount upon receiving a written demand of the obligee;
- The bond must reference the underlying regulatory obligations of the principal. For Financial Resources, the bond should reference the CER Act, specifically subsection 138(1), 138(3), and 138(2) if applicable); and,
- The surety may fulfill its obligations under the bond by: (i) remedying the default, (ii) completing the pipeline Company's obligations under the Financial Resource Requirements established in the CER Act and Regulations, or (iii) paying the bond balance to the Canadian Energy Regulator. If these options are set out in the bond, then the Commission must have the discretion to choose among them.

The Commission may provide further guidance or direction as necessary.

8. Ongoing reporting

8.1 Annual Reporting

Each Company must file annual updates to its Financial Resources Plan with the CER, by 30 April each year. The annual filing must include the following:

1. A completed Annual Financial Resources Requirements Reporting form. The form was issued by the Commission to All Companies Regulated by the CER on 1 March 2023 (C23476).
2. An updated table, completed as per the format in Table 1 – Financial Resources Plan, in section 4.1 of the Guidelines above. The table should be updated with figures reflecting the Company's Financial Resources as at its most recent year ended Audited Financial Statements.
3. An updated certificate of insurance, if insurance is maintained as part of the Company's Financial Resources Plan, detailing:
    a. Coverage/policy types, and limits of each policy type;
    b. Deductible amounts, per incident and policy type;
    c. A list of insured parties under the policy(ies);
    d. Effective date(s) and expiry date(s); and,
    The insurance providers, and the providers' respective A.M. Best Ratings (or equivalent).
4. The Commission may require other annual or periodic filings, as the Commission may direct, if it is of the view that such filings are necessary.

8.2 Material Changes to Financial Resources Plan

Each Company has an ongoing obligation to notify the Commission in writing if there are, or if a Company has reason to believe that there will be, any material revisions to its Financial Resources or its Financial Resources Plan. This includes changes to a Company's financial position, significant draws of credit, or cancellation/amendments to insurance policies that may put at risk a Company's ability to maintain Financial Resources equal to its Absolute Liability limit or higher if ordered by the Commission These developments must be reported to the CER within five (5) business days from the date the Company becomes aware of the development, using the CER's e-filing system. This also includes any reported change to a Company's ability to continue to operate as a going concern. Any resulting changes that are required to a Company's Financial Resources Plan must be e-filed within fifteen (15) business days of the date the Company becomes aware of the development.

This also includes changes to a parent Company financial position, or corporate structure, such that a parent Company's ability to provide any pledged guarantee or funds via a line of credit may be impaired.

As part of its authority to conduct Financial Regulatory Audits, the Commission may monitor, request information, and audit companies at any time to verify that the financial resources information reported is accurate.