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Filed via Email

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

Attention: Ms. Sandy Lapointe, Executive Vice President, Regulatory

Dear Ms. Lapointe:

Re: TC Energy Feedback on Canada Energy Regulator (CER) – Proposed Changes to CER Filing Manual Guide O, Sections 1.5 and A.3.3

The following comments are provided by TC Energy with respect to the above noted matter on behalf of the following CER-regulated entities: TransCanada PipeLines Limited (TCPL), NOVA Gas Transmission Ltd. (NGTL), Foothills Pipe Lines Ltd. (Foothills), Trans Québec & Maritimes Pipeline Inc. (TQM), Great Lakes Pipeline Canada Ltd. (GLC), and TransCanada Keystone Pipeline GP Ltd. (Keystone).

With over 65 years of experience, TC Energy is a leader in the responsible development and reliable operation of North American energy infrastructure including natural gas and liquids pipelines, power generation and gas storage facilities. As a highly regulated enterprise, TC Energy has experience working within Canada's regulatory frameworks and those elsewhere in North America and is well situated to comment on proposed Filing Manual changes.

TC Energy supports the continual improvement of the CER Filing Manual. As part of this continual improvement, TC Energy emphasizes the need for project proponents to operate in a regulatory environment that provides efficiency of process and certainty of timing. Clarity regarding timelines associated with regulatory process steps is essential to improve regulatory efficiency, and in turn, project efficiency. Accordingly, TC Energy's attached comments, to Guide O and sections 1.5 and A.3.3, have been compiled with the intention of increasing clarity and certainty of timing in the regulatory process.

We look forward to continued engagement on this matter. If the CER requires additional information with respect to this filing, please contact me at (403) 920-5052 or by email at robert_tarvydas@tcenergy.com

Yours truly,
TC Energy

Original signed by

Robert Tarvydas,
Vice-President, Strategy, Regulatory & Business Planning
Canadian Natural Gas Pipelines

CER Filing Manual Updates – Guide O (Variances and Project Updates)

Filing Manual Section	CER Proposed Wording	TC Energy Proposed Revisions (Blacklined)	TC Energy Rationale
Guide O.1.2	<p>Guidance</p> <p>.... At a minimum, and if not done at the time the name is changed by the company, the changes should be noted when filing certain annual compliance information each January, such that the Commission can update certificates and orders accordingly^[1].</p> <p>---</p> <p>¹ See MH-001-2013 Reasons for Decision Set-aside and collection mechanisms May 2014 Pipeline Abandonment – Financial issues, Appendix XV Reporting Form – Companies using Trusts for Set-aside mechanism, Appendix XVI and Appendix XVI Reporting Form – companies using Set-aside mechanisms other than trusts, and Exempt Companies, page 157-8, pdf 175-6.</p>	<p>Guidance</p> <p>.... At a minimum, and if not done at the time the name is changed by the company, the changes should be noted when filing certain annual compliance information each January <u>for companies using set-aside mechanisms other than trusts and exempt companies, and April for companies using trusts as set-aside mechanisms</u>, such that the Commission can update certificates and orders accordingly^[1].</p> <p>¹ See MH-001-2013 Reasons for Decision Set-aside and collection mechanisms May 2014 Pipeline Abandonment – Financial issues, Appendix XV Reporting Form – Companies using Trusts for Set-aside mechanism, Appendix XVI and Appendix XVI Reporting Form – companies using Set-aside mechanisms other than trusts, and Exempt Companies, page 157-8, pdf 175-6 <u>and subsequent directions regarding filing deadlines.</u></p>	<p>Correction applied for companies that use trusts as set aside mechanisms as they are required to file their reporting forms in April as a revision to the MH-001-2013 Decision deadline. See NEB Letter dated January 21, 2016 (Filing ID: A75255) for the revised deadline.</p>
Guide O.2 Variances	<p>Unlike many other types of applications, there are no service standards associated with variance filings. Companies are encouraged to plan accordingly and to ensure the variance application is complete prior to submission.</p>	<p>See TC Energy Rationale</p>	<p>TC Energy requests that service standards be implemented for variance filings. These standards could be separated into tiers or levels for different scopes of variance applications, similar to the Category A, B or C levels for service standards applicable to projects applied for pursuant to s. 214 of the CER Act. It is challenging for proponents to plan construction and compliance activities in the absence of expected decision timelines. Service standards for variance filings would improve project timeliness and decrease project costs. Delays in construction due to unknown decision timelines also impact local businesses, Indigenous communities and other groups who may be contracted by a proponent.</p>
Guide O.2 Variances	<p>Examples of substantive changes that require a variance application</p> <p>General</p> <ul style="list-style-type: none"> undertaking project activities in different seasons 	<p>Examples of substantive changes that require a variance application</p> <p>General</p> <ul style="list-style-type: none"> <u>undertaking project activities in different seasons change in timing of project activities which result in changes to the significance determinations of the ESA.</u> 	<p>TC Energy requests that the situation where a proponent undertakes project activities in different seasons than communicated in a project application be handled as a variance application only in situations where the change in timing of activities results in changes to the significance determinations of the project's Environmental Socio-Economic Assessment (ESA). Project proponents carefully plan construction activities to minimize environmental and stakeholder impacts while maximizing seasonal construction windows. Project Environmental Protection Plans (EPP) include mitigation measures appropriate for construction activities in each season including activities occurring in different seasons than planned in the initial project schedule. As such, a change in construction season would only result in a requirement for additional mitigation measures when undertaking a project activity in a different season than set out in a project application resulted in a change to the significant determinations in the ESA. TC Energy also notes that construction timelines are not always within a proponent's control, as they may shift due to a number of factors, including regulatory review timelines, weather, workforce availability and factors related to the COVID-19 pandemic etc.</p>
Guide O.2 Variances	<p>Examples of substantive changes that require a variance application</p> <p>General</p> <p>....</p> <ul style="list-style-type: none"> any additions to the project that were not contemplated in the original application. 	<p>See TC Energy Rationale</p>	<p>TC Energy notes that the proposed revisions to the Filing Manual setting out "Examples of non-substantive changes (i.e. project updates) that do not require a variance application" set out specific additions and changes to the project which are to be filed as project updates. TC Energy requests that language be added to the proposed "Examples of substantive changes that require a variance application" section of the Filing Manual to indicate that a variance is not required for any additions or changes to the project that are included as examples of additions or changes for which an update would be required. This will add clarity to ensure that variances are not filed for changes for which an update is deemed appropriate.</p>
Guide O.2 Variances	<p>Examples of substantive changes that require a variance application</p> <p>General</p> <p>....</p> <ul style="list-style-type: none"> addition of any permanent or temporary workspace that was not assessed in the original application (e.g., the workspace is not covered by the ESA, not covered by existing mitigation measures, and has the potential to change the significance determinations in the ESA). 	<p>Examples of substantive changes that require a variance application</p> <p>General</p> <p>....</p> <ul style="list-style-type: none"> addition of any permanent or temporary <u>land that results in changes to the significance determinations of the ESA workspace that was not assessed in the original application (e.g., the workspace is not covered by the ESA, not covered by existing mitigation measures, and has the potential to change the significance determinations in the ESA).</u> 	<p>In TC Energy's experience, some additional lands which are required by projects cannot be definitively identified prior to construction activities. For example, water sources often cannot be identified until after construction commences due to uncertainties in physical volume availability as well as availability of water permitting quotas from provincial regulators (i.e. volumes may already be fully allocated at the time a proponent is able to apply). Other examples include unexpected archeological finds, Traditional Land Use sites or rare plants, landowner requests made late in the project schedule, flooding from recently built beaver dams, as well as terrain instability that is only identified after vegetation removal. Many additionally required areas are only identified after clearing. Additional land may be required to promote efficiency, minimize environmental impacts and to ensure safety. Lands that are identified to be required after a project application has been submitted are typically adjacent to the approved project footprint and typically require mitigation measures already identified in the</p>

Filing Manual Section	CER Proposed Wording	TC Energy Proposed Revisions (Blacklined)	TC Energy Rationale
			<p>project's approved EPP. Additional lands required are generally very minor, typically ranging from 0.1 ha to 2.5 ha in size, and only comprising a very small percentage of the overall project footprint.</p> <p>TC Energy also notes that in order to use any additional lands on a project, a proponent will have obtained the relevant land rights pursuant to an agreement with a landowner (for rights on privately owned lands) or through the applicable Crown disposition process (for Crown lands). Through the relevant process to obtain the required lands, stakeholder concerns are addressed. In the case of Crown land, obtaining land disposition requires going through the applicable provincial regulatory process, which are robust and require significant levels of detailed information, typically including environmental impacts and historical, archaeological, and paleontological information and an explanation of the need for the land. In some cases, this detailed information is not available in advance of construction and some provincial regulators prefer additional land requirements are applied for only after detailed field level planning is completed. Typically, this planning is completed immediately prior to construction to ensure the planning considers accurate field conditions.</p> <p>For these reasons, the current proposal could result in an administratively intensive process resulting in a high volume of variances, project delays and additional costs to project proponents and customers with little commensurate benefit to stakeholders or environmental protection. TC Energy recommends that a variance only be required for the addition of temporary workspace or permanent land rights when the use of the additional land by the project would result in changes to the significance determinations of the ESA. TC Energy submits that this approach properly balances the environmental and stakeholder considerations with regulatory efficiency and the certainty required for proponents to avoid unnecessary cost and schedule impacts. TC Energy also notes that increasing the number of variance requests could result in delays to construction that have the potential to push more projects into less optimal work seasons from both a cost/schedule and environmental perspective. Lastly, imposing requirements to apply for variances for additional land may encourage proponents to take more land at the time of application than may be strictly required for construction, which will be to the detriment of stakeholders and the environment.</p>
Guide O.2 Variances	<p>Examples of substantive changes that require a variance application</p> <p>Engineering</p> <p>...</p> <ul style="list-style-type: none"> permanent or long-term decrease in the Maximum Operation Pressure 	See TC Energy Rationale	TC requests a further description of what is meant by "long-term decrease". TC Energy also notes that currently, for increases to maximum operating pressure, companies are required to submit an application pursuant to section 43 of the <i>Onshore Pipeline Regulations</i> (OPR). TC Energy requests that the CER confirm that its intention is that applications under s. 43 of the OPR are required for increases in facility MOP, but that a variance application would be sufficient for a decrease to MOP.
Guide O.2 Variances	<p>Filing Requirement</p> <p>Applications for variances must include the following:</p> <p>...</p> <p>3. A statement that no changes to the facility economics will result from the variance request, or provide documentation or information to explain any changes to facility economics;</p>	3. A statement that no material changes to the facility economics will result from the variance request, or provide documentation or information to explain any material changes to facility economics;	TC Energy requests that this requirement be modified to require that variances only include a statement that no material changes to facility economics will result from the variance. TC Energy notes that any change to a facility specification could result in some change to the cost (positive or negative) associated with constructing and operating that facility. In TC Energy's experience, most changes are not material.
Guide O.3 Project Updates	<p>Examples of non-substantive changes (i.e. project updates) that do not require a variance application</p> <p>General</p> <ul style="list-style-type: none"> non-compliances that were identified during the construction phase, but were corrected at the time; notification details should include: <ul style="list-style-type: none"> non-compliance summary including date; activity that was in non-compliance to a commitment, condition or regulation (e.g., EPP, OPR, s. 36(f) etc.); steps taken to rectify the non-compliance; and steps taken to ensure the non-compliance would not be repeated. 	See TC Energy Rationale	Non-compliances are required to be reported pursuant to the standard 30-day Condition Compliance by Accountable Officer reporting condition issued by the CER on all approved projects. This reporting provides details regarding why any non-compliance occurred, and the steps taken to correct it. TC Energy submits that requiring project proponents to file an update for corrected non-compliances as they occur would be redundant and increase the administrative burden on the Commission and project proponents. TC Energy also notes that where projects are conditioned to file a Construction Progress Report (generally s.183 projects), material non-compliances are identified in the report.

Filing Manual Section	CER Proposed Wording	TC Energy Proposed Revisions (Blacklined)	TC Energy Rationale
Guide O.3 Project Updates	<p>Examples of non-substantive changes (i.e. project updates) that do not require a variance application</p> <p>General</p> <p>...</p> <ul style="list-style-type: none"> non-substantive expansion of a previously-approved temporary workspace 	<p>Examples of non-substantive changes (i.e. project updates) that do not require a variance application</p> <p>General</p> <p>...</p> <ul style="list-style-type: none"> non-substantive expansion of a previously-approved temporary workspace <u>addition of any permanent or temporary land that does not result in changes to the significance determinations of the ESA and requires updating of the information filed as part of project application.</u> 	<p>TC Energy submits that the term "non-substantive", without further explanation, does not clearly set out the circumstances in which the addition of temporary workspace requires a project update. TC Energy also notes that the proposed wording only refers to temporary workspace and does not address the addition of any new permanent land rights.</p> <p>TC Energy recommends that the language apply to any additional land required by a project that is not set out in the project application, whether permanent or temporary in nature. TC Energy also recommends that project updates be required for permanent or temporary land addition which <u>do not</u> result in changes to the significance determinations of the project ESA (and by contrast, as described above, land additions which do result in changes to the significance determination in the ESA, require variance applications). A project update, and not a variance application, is suitable for the addition of land that does not result in a change to the significance determinations of the ESA, as the mitigation measures included in each project EPP continue to be appropriate to address potential environmental effects, unless the additional land results in changes to the significance determinations in the ESA. As noted in TC Energy's rationale above for the addition of land requiring a variance application, a proponent will have obtained the relevant land rights pursuant to an agreement with a landowner (for rights on privately owned lands) or through the applicable crown disposition process (for Crown lands) for any lands required for a project.</p> <p>TC Energy also recommends that project updates for land additions only be required in instances where information filed as part of the project application requires revising. This will avoid filings for changes which do not result in any revisions to the project application, which would be minor in nature.</p>

CER Filing Manual Updates – s. 1.5 (Confidential Filing)

Section 1.5.1 – Confidential Filing	<p>1.5.1 Filing Requirements</p> <p><u>Applicants for all requests</u></p>	<p>1.5.1 Filing Requirements</p> <p>Applicants <u>Applications</u> for all requests</p>	<p>Typographical error.</p>
Section 1.5.1 Confidential Filing	<p>Guidance</p> <p><u>Sections 60 and 61 of the CER Act</u></p> <p>When considering the confidentiality request, the Commission or Designated Officer may establish a comment process to solicit feedback on the request and may post a notice of the request on the CER website to permit comments from the public. If the Commission or Designated Officer is satisfied that the filing meets the requirements set out in sections 60 or s. 61, it may take measures that it considers necessary to ensure the confidentiality of the filing. One such measure is that only select CER staff, Commissioners or Designated Officers responsible for the considering the filing would have access to the information, and the information would not be available to the public. In some proceedings it may be necessary for fairness reasons for another party or parties to have access to the confidential filing, subject to appropriate undertakings or other protective measures. If a request for confidentiality is granted the Commission or Designated Officer will provide reasons and issue directions or an order. The confidential information will be protected by the CER.</p>	<p>See TC Energy Rationale</p>	<p>TC Energy requests that the consideration of any confidentiality requests, including any comment process established by the Commission or a designated officer, and/or the issuance of a Commission decision, not impact the timing of condition approvals, such that approvals will continue to be received in the timeline associated with the relevant condition. For example, for a condition which is required to be filed for approval 30 days prior to construction start which includes a request for confidentiality, TC Energy would request confirmation that the condition approval will be received within 30 days of the filing and prior to construction start, even in circumstances where the confidentiality request may still be under review. This will allow proponents to continue with project activities as scheduled (e.g. construction start), avoiding costs associated with project delays and ensuring regulatory certainty. TC Energy requests that language confirming this be added to the Guidance set out in the Filing Manual.</p> <p>TC Energy also requests that language be added to the Filing Manual to confirm that requests for confidentiality of personal and business contact information are not required for redactions that are supported by the application of applicable privacy legislation. This approach is consistent with past guidance from the CER and may reduce the number of confidentiality requests.</p>
Section 1.5.1 Confidential Filing	<p>Guidance</p> <p><u>Sections 60 and 61 of the CER Act</u></p> <p>...</p> <p><u>If the Commission or Designated Officer is not satisfied that the applicant has demonstrated that the filing meets the requirements of section 60 or 61, the document will be returned to the applicant and will not be considered as part of the application. In some instances, the applicant may be encouraged to refile the information on the public record, in order to have complete information for the application.</u></p>	<p>Guidance</p> <p><u>Sections 60 and 61 of the CER Act</u></p> <p>...</p> <p>If the Commission or Designated Officer is not satisfied that the applicant has demonstrated that the filing meets the requirements of section 60 or 61, the document will be returned to the applicant and will not be considered as part of the application. In some instances, the applicant may be encouraged to refile the information on the public record, in order to have complete information for the application.</p>	<p>TC Energy submits that, in the event that the Commission or Designated Officer is not satisfied that the applicant has demonstrated that a filing meeting the requirements of section 60 or 61, the applicant, in all instances, should have the opportunity to refile the information on the public record. Without this opportunity, applications or other filings may be incomplete. Applicants should, upon learning that certain information cannot be filed confidentially, have the opportunity to choose whether to file the information publicly or not to file the information.</p>
Section 1.5.1 Confidential Filing	<p>Other filings</p> <p>...</p>	<p>See TC Energy Rationale</p>	<p>TC Energy notes that certain confidential filings are typically filed for every project, such as sensitive environment features and components of Construction Safety Manuals. TC Energy is concerned that requiring proponents to file formal requests</p>

	<p>The CER will consider similar information as section 60 and 61 applications, as well as whether a filing is expected to attract significant third-party interest, in determining whether it should not be made public. As such, requesters are asked to consider the requirements in sections 60 and 61 when providing detailed information explaining why a filing should not be made public. When considering the request, the CER may seek feedback and may post a notice of the request on its website to permit comments from the public.</p>		<p>to request confidentiality for each of these filings, and having the CER review each request, will create regulatory inefficiency and add administrative burden. In order to promote regulatory efficiency and reduce administrative burden, TC Energy requests that the CER establish categories of filings which are approved to be filed as confidential, such as confidential components of Construction Safety Manuals.</p> <p>Similar to TC Energy's comments regarding the proposed Guidance on requests for confidentiality made pursuant to sections 60 and 61 of the CER Act, TC Energy requests that the consideration of any confidentiality requests, including any comment process established by the Commission or a designated officer, not impact the timing requirements of the relevant condition or other regulatory requirement. For example, for a condition which is required to be filed 30 days prior to construction start which includes a request for confidentiality, TC Energy requests that the CER confirm that the proponent can commence construction as scheduled, even in circumstances where the confidentiality request may still be under review. This will allow proponents to continue with project activities as scheduled (e.g. construction start), avoiding costs associated with project delays and ensuring regulatory certainty. TC Energy requests that language confirming this be added to the Guidance set out in the Filing Manual.</p> <p>Additionally, as stated in TC Energy's comments regarding the proposed Guidance on requests for confidentiality pursuant to section 60 and 61 of the CER Act, TC Energy requests that language be added to the Filing Manual to confirm that requests for confidentiality of personal and business contact information are not required for redactions that are supported by the application of applicable privacy legislation. This approach is consistent with past guidance from the CER and may reduce the number of confidentiality requests.</p>
Section 1.5.1 Confidential Filing	<p>Guidance Other filings ...</p> <p><u>If the CER is not satisfied that the requester has demonstrated that the filing should be withheld from the public, the document will be returned to the requester and will not be considered. In some instances the requester may be encouraged to refile the information in a manner that would permit disclosure to the public.</u></p>	<p>Guidance Other filings ...</p> <p>If the CER is not satisfied that the requester has demonstrated that the filing should be withheld from the public, the document will be returned to the requester and will not be considered. In some instances the requester may be encouraged to refile the information in a manner that would permit disclosure to the public.</p>	<p>Similar to filings requested to be confidential pursuant to section 60 or 61 of the CER Act, TC Energy submits that, in the event that the CER is not satisfied that that a filing should be withheld from the public, the requestor, in all instances, should have the opportunity to refile the information on the public record. Without this opportunity, the requestor may be in noncompliance of a condition filing or other regulatory requirement. Applicants should, upon learning that certain information cannot be filed confidentially, have the opportunity to choose whether to file the information publicly or not to file the information.</p>

CER Filing Manual Updates – s. A.3.3 (Markets)

s. A.3.3 Markets	<p>Table A-54: Overview of Supply, Transportation and Markets Contractual Arrangement(s):</p> <ul style="list-style-type: none"> Pipelines with contracted capacity: evidence of the transportation contract arrangements underpinning the projected throughput. 	<p>Table A-4: Overview of Supply, Transportation and Markets Contractual Arrangement(s):</p> <ul style="list-style-type: none"> Pipelines with contracted capacity: evidence a detailed description of the transportation contract arrangements underpinning the projected throughput. 	<p>TC Energy notes that this language is used in earlier parts of Table A-4 and suggests this requirement be made consistent throughout. In addition, evidence of transportation contract arrangements could be interpreted to include copies of customer agreements, which contain commercially sensitive information.</p>
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