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VIA EMAIL

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RE: Public Comment Period on Proposed Updates to Guide R of the Filing Manual: Transfer of Ownership, Lease or Amalgamation (CER Act s. 181)

On behalf of its companies operating pipelines regulated by the Canada Energy Regulator (CER or Commission), Enbridge Inc. (Enbridge) writes in response to the CER's invitation for comments on proposed revisions to Guide R of the Filing Manual: Transfer of Ownership, Lease or Amalgamation.

Guide R and the associated Change in Ownership Application form provide filing guidance in relation to applications made pursuant to section 181 of the *Canadian Energy Regulator Act* (CER Act). Enbridge agrees with the initiative to update Guide R to be in line with recent Commission decisions and the current processes for assessing transfer of ownership applications. Enbridge notes that some of the revisions appear to align with recent legislative amendments (e.g., amendments in the CER Act related to abandoned pipelines, abandonment funding and financial resource requirements), which is also useful.

Please find below Enbridge's specific comments regarding the proposed new Guide R updates and proposed Change in Ownership Application form.

Guide R: Transfer of Ownership, Lease or Amalgamation

- The updated guide and Change in Ownership form use numerous different terms to describe the subject matter of the transactions addressed in section 181 of the CER Act: "asset", "facilities", "pipeline facilities", "pipeline/facilities", "pipeline and facilities", "other facilities", "other facility", "pipeline[s]", and "pipeline[s] and abandoned pipeline[s]". This lack of consistency may lead to confusion regarding the transactions that are subject to the requirement to obtain leave under section 181 of the CER Act. Enbridge recommends that care is taken in drafting the updated guide to use terminology that aligns with that used in the CER Act. Accordingly, it would be appropriate to refer to the terms "pipeline or abandoned pipeline" (or abbreviated term) throughout the updated guide.

- Similarly, throughout the updated guide and Change in Ownership Application form, inconsistent terminology is used to describe the companies and transactions that are subject to section 181 of the CER Act. For example, the guide references "the company acquiring the facilities" and "the new owner or operator", and it is not clear whether these differences are intentional and also whether the associated filing guidance applies in the case of an amalgamation or lease. Enbridge recommends that care is taken to track the language in the CER Act, which requires leave to "sell or otherwise transfer, or lease", "purchase or otherwise acquire, or lease" and to "amalgamate with" another company and that the guide

clearly spells out whether there are differences in requirements for acquisitions, transfers, amalgamations and leases.

- The updated guide states at page 1 that an application filed pursuant to section 181 is "usually followed by" other applications including applications under sections 69, 183, 190, 213, 214, 225 or 240 of the CER Act. On page 3, the updated guide states: "Subsequent to receiving leave from the Commission to effect the transaction, the companies must notify the CER when the transaction has been completed. At that time, the company acquiring the facilities must apply under section 69, 190 or 280 of the CER Act to have the existing Order or Certificate amended to reflect the transaction". In Enbridge's recent experience, these applications are typically made as part of the section 181 application and, upon notification to the CER of the completion of the transaction, the CER will, on its own initiative, issue amending orders and/or certificates.

- While a stated goal of the update is to clarify the advance nature of the leave requirement, certain language/verb tenses used in the updated guide continue to suggest after-the-fact application. For example, at page 2, an application is to describe the intended use of the facilities, but also "…any changes in the conditions of service offered". Enbridge expects that any changes in the conditions of service would arise post-transaction, so the instruction should refer instead to "any <u>proposed</u> changes in the conditions of service".

- On page 2, the updated guide requires confirmation that a copy of certain records "have been provided" to the new owner of the facilities. Enbridge notes that records are not always transferred in advance of completion of the transaction. Accordingly, Enbridge recommends that the guide be revised to reference records that "have been <u>or will be</u> provided".

- "Proposed transaction" is used periodically (e.g., page 3), but so is "transaction" (e.g., page 2). It may bring further clarity if the CER used "proposed transaction" throughout.

- The footnote on page 3 references that the pipeline is responsible for providing shippers and other interested parties with sufficient information to enable them to ascertain whether "the tolls are reasonable" and that "Tariffs…automatically become effective and are presumed to be just and reasonable". Enbridge assumes the references should be to "tolls" (not tariffs) being "<u>just and</u> reasonable".

- On pages 3, 4, and 5, the updated guide references a singular "Order" or "Certificate" that may need to be revised or varied. Enbridge notes that often multiple orders or certificates are associated with pipeline(s) being transferred.

- Enbridge recommends incorporating clear organizational structure to the updated guide, with delineated headings and subheadings (e.g., using numbering or roman numerals). For example, starting at page 4, it is unclear whether "Transaction Details" and "Acquiring Company Information", and "Maps" are applicable to all applications and are subheadings under "Guidance", or are subheadings under "Amalgamations".

- Page 4 of the updated guide refers to the acquiring company concurrently applying under either section 214 or section 183 of the CER Act, "as if for new facility" (*sic*), for authorization to operate the pipeline. Guidance on what this means would be appreciated, as Enbridge

would not expect the same environmental and socio-economic and other filing requirements to apply for facilities that are already operational.

- There are several references to the leave to open requirements under section 213 of the CER Act and the Change in Ownership Application form states that, for facilities coming into CER jurisdiction, the company "must also apply concurrently under section 213 for leave to open". In Enbridge's experience, companies have not always applied for, nor has the CER or its predecessor generally granted or amended, leave to open orders in the context of a pipeline that has already received leave to open or is otherwise operational. For example, in two recent applications, the CER decided it was unnecessary to vary certificates or orders granting leave to open, which was considered to be an approval of a past action or specific event in time[1]. Enbridge suggests that the CER provide clearer guidance regarding whether, and in what circumstances, a company is required to obtain leave to open.

- Page 4 of the updated guide indicates that the company selling or transferring should include information in its application about the acquiring company, including "financial information demonstrating that the acquiring company has the ability to finance the ongoing operations of the pipeline (for example, by providing recent financial statement(s)". Enbridge submits that it should not be necessary to provide financial information regarding the acquiring company, particularly in the case of a pipeline leaving CER jurisdiction post-transaction. Financial statements for the acquiring company would not provide useful information to the extent the company owns other assets or plans to operate the pipeline using a different operating cost profile. In the case of a pipeline remaining within CER jurisdiction, the acquiring company will have to satisfy the financial resource requirements and abandonment funding obligations, which should be sufficient for the CER to assess the ability of the company to finance ongoing operations.

- On page 4, the updated guide states: "The company should also provide confirmation that the regulator that would gain jurisdiction over the facilities has been notified of the transaction". This requirement is unclear given that the statement appears under the circumstance of facilities not currently regulated by the CER becoming regulated by the CER after a proposed transaction.

- On page 5, the updated guide states: "The correct time to apply for leave to amalgamate is no later than 40 days before the amalgamation is scheduled to close". Enbridge assumes this timeline is a "recommended time to apply" and not a requirement, and questions why a recommended time to apply is not provided for the other types of transactions?

- The acquiring company is required to provide "information about the financial capacity of the acquiring company in order to demonstrate that it has the resources to manage the risks and costs of the pipeline during operation and in the event of an incident that harms people or the environment" (page 5). This language is not consistent with the legislative requirement, which is to maintain financial resources, up to a prescribed amount, to cover the costs of "an unintended or uncontrolled release" from a pipeline. This filing requirement

[1] See CER letter dated May 14, 2024 in respect of the NOVA Gas Transmission Ltd. and NGTL GP Ltd. on behalf of NGTL Limited Partnership Application for the transfer of the NGTL System (File 3429410) and CER letter dated May 12, 2020 in respect of the Westcoast Energy Inc. and NorthRiver Midstream Operations LP Application for the transfer of certain gathering and processing facilities (File OF-Fac-Gas-W102-2019-01 01).

is also covered on page 2 - a clearer organizational structure may help to clarify why these requirements are listed in more than one section.

- Under the heading "Changes" on page 6, the first bullet ought to also reference decommissioned status.

- Enbridge is not clear on the meaning of the sentence "Describe all changes to which company is financially responsible for liabilities related to the facilities" on page 6.

- At page 7 related to Pipeline Financial Resource Requirements:

    - The requirement to maintain financial resources to cover the costs of an unintended or uncontrolled release from a pipeline is not unlimited. The operator is liable without proof of fault or negligence up to the limit of liability prescribed by the regulations. Enbridge recommends the following be added: "…to cover the costs of an unintended or uncontrolled release from a facility up to the prescribed absolute liability limit amount".

    - The acquiring company should provide "…the applicable post-transaction absolute liability limit".

    - The acquiring company should provide its "proposed" Financial Resources Plan, as any existing plan may not be applicable post-transaction.

Change in Ownership Application Form

- Enbridge suggests that the form title be revised to align with the title of Guide R, such as the Transfer of Ownership, Lease or Amalgamation Application form, if it is to be used for all section 181 transaction types.

- As noted above, the Change in Ownership Application form also uses inconsistent terminology respecting the transactions that are subject to the leave requirement. For example, under "When to Use This Form", references to "other facilities" and "other facility" is made, which is not consistent with section 181 of the CER Act. The reminder below these bullets also does not reference "abandoned pipeline". Again, care should be taken in drafting this form to use correct terminology, which is aligned with that used in the updated guide and the CER Act.

- As noted above, inconsistent terms are used for the companies: "purchaser", "seller", "company acquiring the facilities", "the acquiring company", "the company proposed to own and operate the pipeline", "the company divesting the facilities", "the new owner of the facilities". Consistent terminology should be used for each party to a transaction, including so companies know whether these requirements apply in the context of a lease or amalgamation.

- Regarding The Application table starting on page 4:

    - In row 4, the term "Board Orders" has been replaced with "Instruments", which is not clear. It would be helpful if the CER would confirm what type of instruments (e.g.,

orders, decisions, certificates) should accompany the application, and whether certain instruments need not be provided (e.g., leave to open orders, orders without enduring effect). Enbridge also strongly recommends that the CER develop a post-approval amendment process for orders and certificates that accounts for the fact that in many cases, the facilities covered by a particular order or certificate are not clearly delineated. The CER should consider the issuance of general or blanket orders to reflect transferred facilities, rather than issuing individual amending orders and certificates, to ensure there are no gaps in regulatory records for pipelines following transfer of ownership transactions.

- Regarding the requirement to provide "the name of the accountable officer" in row 6, Enbridge recommends that this be revised to state that the company should provide "the name of the proposed accountable officer", since the appointment of the Accountable Officer may not take place until post-transaction, and the current practice, pursuant to section 6.2 of the Canadian Energy Regulator Onshore Pipeline Regulations, is that companies have 30 days to notify the CER of an appointment.

- The fourth bullet in row 8 (Action Sought) refers to the variance of orders under section 69 of the CER Act. Enbridge notes that variances to certificates under section 190 of the CER Act may also be required.

- Row 12 (Records) references the outdated 2011 edition of CSA Z662. Also, as noted earlier, this sentence should be revised to reflect that the records may not be transferred until completion of the transaction.

- The guidance for the Notification and Engagement section reference "the proposed change in ownership". Enbridge assumes, as per the guidance on page 1, that the form is intended to also be used for leases and amalgamations, and this should be clear in the guidance descriptions.

- Row 23 (Operating Status) should include abandoned status.

- Row 30 (Financial Resources) refers to "absolute liability for the facilities". Enbridge notes that the liability limit applies to an entity, not an asset. Enbridge recommends deleting "…for the facilities" in the first bullet. Also, the third bullet should reference the acquiring company's "proposed" Financial Resources Plan.

Enbridge appreciates the opportunity to provide feedback on the proposed Filing Manual changes. Should the CER have any questions regarding these comments, please email the Enbridge Regulatory Affairs inbox at Enbridge.notifications@enbridge.com.