



Filing Manual – Guide R – Transfer of Ownership, Lease or Amalgamation (CER Act section 181)

The Commission's leave, by order, is required under section 181 of the CER Act if a company intends to sell or otherwise transfer, or lease; or purchase or otherwise acquire or lease; any pipeline, abandoned pipeline, or other facilities, either in whole or in part, that are regulated by the CER.

The Commission's leave is also required for a company who is authorized to construct or operate a pipeline, or if it owns an abandoned pipeline, to amalgamate with another company.

A Commission order, granting leave, under section 181 of the CER Act is required prior to any of the transactions listed above taking place.

An application filed pursuant to section 181 is usually followed by one or more of the following applications:

- variation or transfer of a certificate pursuant to section 190 of the CER Act;
- leave to open, pursuant to section 213 of the CER Act;
- addition to or modification of facilities, pursuant to sections 183 or 214 of the CER Act;
- tolls and tariffs application, pursuant to sections 225 to 240 of the CER Act; or
- review or variance of a CER decision or order, pursuant to section 69 of the CER Act;

The word "company" as defined in section 2 of the CER Act encompasses entities incorporated (or continued and not discontinued) under provincial corporate legislation.

The information that the CER requires to evaluate the application will come from two sources:

- the company selling, transferring, or leasing (becoming the lessor of) the facilities and
- the company purchasing, acquiring, or otherwise leasing (becoming the lessee of) the facilities;

Or for an amalgamation, information is required from the company with facilities regulated by the CER (or both companies, if they both have facilities regulated by the CER).

Applicants are encouraged to use the [Change in Ownership](#) form on the CER website to complete their applications.

Goal

The application includes information describing:

- the nature of the transaction that triggers section 181 of the CER Act and the facilities involved;
- the new owner and operator;

- the intended use of the facilities as well as any changes in the conditions of service offered;
- how the company acquiring the facilities will meet the financial resource requirements associated with operating any facilities that would be regulated by the CER; and
- how the company will meet its abandonment funding obligations.

Filing Requirements

Companies that are selling or otherwise transferring facilities must generally provide the following information as outlined below. However, depending on the circumstances, acquiring companies may have to provide certain information.

The company selling, transferring, or leasing the facilities must provide the following information:

1. A description of the nature of the transaction (i.e., is the transaction a transfer of ownership, lease, or amalgamation).
2. A map or maps of the pipeline and the relevant upstream and downstream facilities, and identification of any pipeline facility that could become stranded as a result of the transaction (see [section 1.12](#)).
3. A confirmation that a copy of the records set out in section 10.4 of CSA Z662 and paragraphs 56(e) to 56(g) of the OPR have been provided to the new owner of the facilities.
4. The original cost of the asset, depreciation, and net book value.
5. The estimated cost to abandon the facilities.
6. Whether there are currently third-party shippers on the pipeline, and if so, whether they have been notified of the transaction.

The company acquiring the facilities must provide the following information.

1. The name of the new owner and operator of the pipeline including the appropriate contact information.
2. The purchase price of the asset.
3. A description of the intended long-term use of the facilities.
4. A description of any changes in the conditions of service offered on the pipeline, including the estimated toll impact.
5. If the records set out in section 10.4 of CSA Z662 and paragraphs 56(e) to 56(g) of the OPR do not exist, the company acquiring the facilities must provide a plan detailing how it will acquire the information/records necessary to maintain and operate the facilities safely.
6. A description of how the company will meet its financial resource requirements.
7. A description of how the company will set aside funds for abandonment.

Guidance

Circumstance of Application

Circumstance: If facilities are currently regulated by the CER and would remain regulated by the CER after a proposed transaction.

When facilities are already regulated by the CER, an Order or a Certificate of Public Convenience and Necessity (certificate) would have been issued once the Commission had determined that the facilities:

- would be constructed and operated in a safe and environmentally sound manner; and
- were required for the present and future public convenience and necessity.

As a result, when a transaction involving the sale, lease, purchase, or amalgamation of CER-regulated facilities is to occur, the Commission needs assurance that, notwithstanding any changes in operation or configuration that are expected to occur, the public interest will continue to be served by the operation of the facilities.

Both companies involved in the transaction are required to apply to the CER for leave to proceed with the transaction. The seller or company that is otherwise transferring or leasing needs an order of the Commission to proceed and the purchaser or the company that is otherwise acquiring or leasing needs an order of the Commission to proceed. It is strongly suggested that the companies jointly make the application.

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 (see [Guide O](#)) to have the existing Order or Certificate amended to reflect the transaction.

If the operation of the pipeline is to be changed, the acquiring company must also meet the requirements of the relevant section(s) of the OPR or PPR and possibly either section 183 or section 214 of the CER Act.

Group 1¹ pipeline companies not regulated on a complaint basis may be required to apply under the CER Act if tolls and tariffs matters need to be addressed (see [Guide P – Tolls and Tariffs](#)).

¹ In 1985, for financial regulatory purposes, the National Energy Board divided the pipeline companies under its jurisdiction into two groups: Group 1 companies with more extensive systems; and Group 2 companies that operate smaller systems. The decision also stated that Group 2 pipeline companies were to be regulated using the complaint approach. The NEB decided to use the complaint approach for certain Group 1 pipelines.

Under the complaints approach, the pipeline is responsible for providing shippers and other interested parties with sufficient information to enable them to ascertain whether the tolls are reasonable. Tariffs, once filed with the CER, automatically become effective and are presumed to be just and reasonable unless a complaint is filed and the Commission is convinced that it needs to examine the tolls.

Circumstance: If facilities are not currently regulated by the CER and would become regulated by the CER after a proposed transaction.

The acquiring company is required to submit the application for leave to purchase or otherwise acquire or to lease under section 181 and should apply concurrently under either section 214 or section 183 of the CER Act (see [Guide A](#)), as if for new facility, for authorization to operate the pipeline. This would provide the Commission with the information it requires to approve the pipeline and grant an order or certificate. The company may also be required to apply concurrently under section 213 for leave to open (see [Guide T](#)).

Circumstance: If facilities are currently regulated by the CER and would no longer be regulated by the CER after a proposed transaction.

The company selling or otherwise transferring or leasing out the facilities is required to apply for leave to sell and apply for the revocation or amendment, as appropriate, of the existing certificate or order.

The company selling or transferring should include information in its application about the acquiring company, including contact information and financial information demonstrating that the acquiring company has the ability to finance the ongoing operations of the pipeline (for example, by providing recent financial statements). The company should also provide confirmation that the regulator that would gain jurisdiction over the facilities has been notified of the transaction. Information provided in the application should satisfy the Commission that the public interest would not be harmed by the transaction.

Amalgamations

When a company with CER regulated facilities is amalgamating with another company (with or without CER regulated facilities), the company(ies) with CER regulated facilities are required to submit the application. Information provided in the application should satisfy the Commission that the public interest would not be harmed by the transaction. This application must describe any impacts of the amalgamation on the amalgamated company's ability to meet abandonment funding requirements and financial resource requirements and describe any planned changes to the operation of the associated facilities. The CER regulated company should also apply for the amendment, as appropriate, of the existing Certificate or Order.

The correct time to apply for leave to amalgamate is no later than 40 days before the amalgamation is scheduled to close.

Transaction Details

If possible, provide:

- the Certificate or Order numbers for the CER-regulated facilities; or

- copies of the equivalent documentation issued by the present regulator of the facilities if not CER-regulated.

Otherwise, provide the:

- legal name of the pipeline/facilities;
- location; and
- complete description of the facilities and the products to be carried.

In addition to providing the information identified above, also provide the:

- proposed date of the transaction;
- method of financing; and
- the operating status of the facilities.

Acquiring Company Information

Provide:

- the complete legal name of the company
- a copy of the Certificate of Incorporation
- if the owner is different from the operator, the name of the operator and the relationship between the owner and the operator;
- contact information for both the owner and the operator;
- verification as to whether the province of incorporation is different from where the company will be carrying on business for the facilities;
- 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 (see also ***Pipeline Financial Resource Requirements***, below); and
- confirmation that the new regulator has been notified of the transaction if facilities would leave the CER's jurisdiction.

Maps

The map or maps should:

- allow the reader to locate the pipeline geographically within a larger region, for example, a province;
- include relevant details of upstream, downstream and surrounding facilities to enable the CER to understand the relative importance and role of the subject facilities;
- identify the appropriate regulator if any of the relevant facilities are not CER-regulated;
- indicate stranded or potentially stranded facilities; and

- meet the requirements outlined in section 1.12 of the Filing Manual.

Long-Term Use

Describe the present use of the facilities. The acquiring company should also confirm that the long-term use is not expected to change, or provide a description of plans for the use of the facilities if the long-term use is expected to change.

Changes

If there are to be any changes to the condition of service offered by the facilities:

- include a description of the status of the facilities, (i.e., whether the facilities are presently in operation, deactivated or abandoned);
- explain any changes to the type of service, or terms and conditions of service; and
- describe how these changes would affect the operation of the facilities.

Describe all changes to which company is financially responsible for liabilities related to the facilities.

If a toll, tariff, or negotiated settlement is presently in effect, describe any changes to the toll, tariff, or negotiated settlement. If no toll, tariff, or negotiated settlement is presently in effect but third-party shippers are anticipated to require service on the pipeline and facilities, file a proposed tariff with the application.

Group 1 pipeline companies not regulated on a complaint basis may be required to apply under sections 225 to 240 of the CER Act if tolls and tariffs matters need to be addressed (see [Guide P – Tolls and Tariffs](#)).

Abandonment Funding

Provide:

- the total Abandonment Cost Estimate of the facilities being sold or transferred;
- a proposal by the seller for its existing letter of credit, surety bond, or trust for abandonment funding;
- a draft copy of the acquiring company's letter of credit, surety bond, or trust agreement for setting-aside abandonment funds, and:
 - if using a trust to set aside funds, the dollar amount of abandonment funds that will be in the acquiring company's trust upon its establishment;
 - if using a trust, a proposed trustee for the trust, and a description of whether or not the trustee is regulated under the *Trust and Loan Companies Act*, and
 - if using a trust, a description of how the acquiring company intends to collect, or contribute, funds to the trust, as applicable.

See [Chapter 7 – Referenced Documents – Abandonment Funding and Planning](#) for documents that describe the requirements for pipeline abandonment cost estimates, set-aside and collection mechanisms and other CER direction regarding abandonment funding. The CER website also includes regularly-updated [list of abandonment funding documents](#).

Pipeline Financial Resource Requirements

Companies that hold authorizations to construct and/or operate facilities regulated by the CER are required to maintain financial resources to cover the costs of an unintended or uncontrolled release from a facility. Companies are required to demonstrate and maintain financial resources that match, at a minimum, the amount of absolute liability applicable to them. A portion of the financial resources must be readily accessible to the company.

The acquiring company should provide:

- the applicable absolute liability limit;
- the applicable amount of financial resources required;
- its [Financial Resources Plan](#).

For more information on the CER's financial resource requirements see:

- [CER – Pipeline Financial Requirements Guidelines \(cer-rec.gc.ca\)](#); and
- [Section A.3.4 Financing and Financial Resources](#) of the Filing Manual.

Next Steps...

File the completed application. Applicants are encouraged to use the [Change in Ownership](#) form on the CER website to complete their applications.