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Suite 1110 505 3rd St SW | P: (403) 221 8777
Calgary, Alberta T2P 3E6 | F: (403) 221 8760
| aboutpipelines.com

May 21, 2021

Veronique Duhamel
Director, Engagement
Canada Energy Regulator
517 10 Ave SW #210
Calgary, AB T2R 0A8

RE: CEPA Feedback, Land Matters Group Workplan and Landowner Guide Feedback

Dear Ms. Duhamel:

The Canadian Energy Pipeline Association (CEPA) would like to take this opportunity to provide feedback to the Canada Energy Regulator's (CER) Land Matters Group (LMG) workplan as well as the CER Landowner Guide. CEPA represents Canada's transmission pipeline companies who operate approximately 118,500 kilometres of pipeline in Canada and 14,000 kilometres in the United States. CEPA members move approximately 1.7 billion barrels of liquid petroleum products and 5.6 trillion cubic feet of natural gas each year.

CEPA has appreciated being included in the CER LMG and supports its collaborative work aimed at continual improvement of current and emerging land matters. CEPA has attached specific comments for the CER's consideration which include recommendations for both the LMG workplan and the Landowner Guide. Please do not hesitate to contact the undersigned if you have any questions or require clarification.

Yours sincerely,

Kai Horsfield
Manager, Regulatory and Policy



CER LMG Workplan- CEPA Comments

Issue	Scope/Context	References	Action	CEPA Feedback/Comments
<p>1. Damages Defined</p>	<p>While referred to in the CER Act, the definition of damages itself is not clear and subject to interpretation; Clarity on what constitutes a damage, examples, physical, business financial; types of damages throughout the lifecycle</p>	<p>Land Matters Guide Guidance on Land Related Compensation Disputes Landowners Guide to Land Agreements</p>	<p>Explore expanding the Land Matters Guide for known impacts to land from pipeline and power line projects during the full lifecycle. Also, consideration to include a glossary of terms.</p>	<p>It is important to distinguish land rights acquisition from damages resulting from construction, operation and maintenance of a pipeline.</p> <ul style="list-style-type: none"> - The former is prescribed under the <i>CER Act</i> including the acquisition process and considerations (market value, motivation, injurious affection). The topic is thoroughly discussed during acquisition with landowners such that it is understood with references to CER materials. - If a landowner believes damages have been incurred because of pipeline construction or operation on his or her property, the landowner should be encouraged to disclose his concerns to the company and the company has a legal obligation to respond. In a dispute situation, assistance can be sought through the CER ADR and/or a Compensation Dispute Hearing processes. <p>CEPA believes there is an opportunity to clarify damages, even with a vague definition exists in the Land Matters Guide under both the Construction and Operations sections.</p>
<p>2. Company Access to Lands</p>	<p>Abandonment and Post-Abandonment Phase – Clear understanding of the concept of access to land and for what purpose throughout full lifecycle</p>	<p>Land Matters Guide Pipeline Abandonment</p>	<p>Explore expanding the Land Matters Guide for the abandonment phase of the lifecycle.</p>	<p>Under the heading “Are there any costs to the public to abandon a pipeline?” CEPA recommends the CER elaborate on the Land Matters Consultation Initiative (LMCI) specific to the pipeline abandonment and cross-reference any available information respecting the LMCI on the CER website, which includes financial information. Furthermore, adding remarks and referencing the company’s ability to access the lands during End of Life being captured in a Land Agreement between the</p>



				Landowner and Company would help direct the parties back to the importance of negotiating a Land Agreement that both parties are able to execute.
	Clear understanding of the ROE process, including ADR and concept of access to land vs acquiring land rights and the impact of each	Land Matters Guide Filing Manual Guide V	Explore revisions to the Land Matters Guide and Filing Manual to clarify the ROE and ADR processes.	The CER updated Landowner Guide provides a good explanation of the ROE and ADR processes. Many disputes arise from landowners not understanding the rights granted by the Act or the company's overall compensation approach for a pipeline project. The landowner guide could be further updated with some context for the following requirements: <ol style="list-style-type: none"> 1. permanent land rights (including legal occupancy for pipeline, operating rights and access); and 2. consistency in dealings with private property owners.
	Temporary Access to Lands - Landowners lack information on types of access and associated rights; Variations between Federal, Provincial, Territorial jurisdictions create confusion and lack of awareness	Land Matters Guide	Explore revisions to the Land Matters Guide to clarify known types of temporary access to lands required during the lifecycle of a project.	Temporary access should be more broadly discussed, including opportunities to capture access requirements clearly in the Easement Agreement for the Construction, Operations and End of Life phases. Temporary access or workspace occurs throughout the lifecycle of a pipeline. For operation of its pipeline, a company would typically establish certain access routes, for which permanent access may be negotiated with the affected landowners. Temporary access can also include environmental survey work and early route planning with landowners. Notice is typically provided to the landowner for any of the temporary access required providing an opportunity to resolve any concerns related to it and ensuring a safe completion of the activity.
3. Landowner Consultation	Landowners are typically served acquisition notice after the	Filing Manual Section 3.4	Explore revisions to the Filing Manual that clarify the expectations for individual	Early Engagement Guide (Guide L) of the Filing Manual provides a good definition, scope and expectations of parties at the onset of a proposed project. The CER could



	<p>application is filed with CER which is their first direct contact from the company; Landowners need earlier notification of a project and are seeking information on their rights so they can decide how to participate in decision making processes</p>		<p>landowner consultation during project design.</p>	<p>introduce some basic guiding principles to encourage landowners' participation in pipeline projects.</p> <p>Additionally, the flow chart in Figure 1 could have landowner expectations or options added for a more balanced approach. Alternatively, a figure that illustrates it through the experience of a Landowner in the Land Matters Guide could be created.</p>
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CER Landowner Guide – CEPA Additional Feedback

Section #	Issue	Recommendation
Introduction	Unclear definition of “you” and “land in which you have interest in.” Does the CER envision adjacent landowners as ‘having an interest in the lands’ or only those that have legal interest/ownership?	Consider defining the ‘you’ in the introduction.
Proposed Energy Project: Early Engagement Process	The Diagram showing the steps in the early engagement process does not clearly differentiate “certificate applications” (i.e., when notification to CER is required > 4 months in advance of application) and “pipeline exemption order applications” (i.e., when notification to CER is required > 2 months in advance of application).	Consider including a step in the “early engagement process” diagram for those affected by a project to provide feedback to the company. The diagram only indicates the CER and company roles and could benefit from including a stakeholder role in providing feedback.
	The Designated Projects section does not make clear the difference between “designated” and “non-designated” projects.	<p>Consider providing explanation re: the difference between the two application types (perhaps as a footnote on the webpage) or providing links to where the reader can find the differences.</p> <p>Consider providing explanation re: the difference between the project types (perhaps as a footnote on the webpage) or providing links to where the reader can find the differences.</p> <p>(NOTE: This is well covered in the “Crown Consultation” webpage that is linked to the Land Matters Guide, but landowners may not view this webpage if they do not feel it is relevant to them.)</p>
Crown Consultation	Project reviews under the <i>Canadian Energy Regulator Act (CER Act)</i> makes reference to 75 km on new right-of-way but does not provide the definition of new right-of-way.	Consider defining “new right-of-way” in brackets after the first use. Stakeholders may not understand that a linear project >75 km



		does not necessarily result in >75 km of “new right-of-way”.
Statement of Concern	Lack of information on the complaint resolution process.	Consider adding a hyper link to “Complaint Resolution” webpage at the mention of “complaint resolution process”.
	It is not made clear what types of projects would be considered “power line projects that require a certificate.”	Consider providing an explanation re: what power line projects require a “certificate” (perhaps as a footnote) or providing a link where the reader can find this information.
	Clarification of who is the “you” and a lack of definition may be a broader audience than may be intended. (i.e., can adjacent landowners, or anyone file a Statement of Concern?)	Consider clarification of definition of ‘you’ being referred to in this section.
Detailed Route	Unclear definition of “Detailed Route” – there is no Detailed Route for pipeline projects under 40 km and the public should understand this from this publication. It should also be clear <u>who</u> can file a notice of opposition to a proposed Detailed Route and <u>when</u> someone should file it.	The reference to the Detailed Route should be clarified.
	Lack of description of when a Plan, Profile and Book of Reference (PPBoR) is required.	Provide a description of “certificate applications”.
	Under the ‘ <i>Can costs to participate in a detailed route hearing be covered?</i> ’ heading it is stated that “costs that are both reasonable and related to your participation in a detailed route hearing process, such as legal fees may be recovered”, however, the “Participant Funding Program (PFP)” webpage states “Please note that PFP is not available for detailed route hearings”.	Consider clarifying this discrepancy.



	<p>If a landowner does not agree with a CER decision resulting from a detailed route hearing, the landowner may request that the Commission review the decision.</p>	<p>It would be helpful to briefly clarify the circumstances under which the CER would proceed with a review of the decision. The process to review a CER decision is described further in Part III of the Rules of Practice and Procedure. The CER could clarify what information must be provided for CER to look at the application for review, including describing the grounds for review.</p>
<p>Right of Entry Orders</p>	<p>Sections in the Land Matters Guide should use terminology with the sections of the <i>CER Act</i>. Referencing a “land agreement” is confusing. What is a “land agreement?”</p>	<p>This section should say that where a company is unable to reach an agreement “for the acquisition or lease of lands”. It should also add/clarify that the Pipeline Company must provide the owner with notice indicating its intention to apply for right of entry before it can apply to the CER for right of entry. It would also be useful to indicate the timelines associated with the notice and the application. A pipeline company cannot apply for right of entry less than 30 days or more than 60 days from the date of the notice. This is intended to provide an owner with an appropriate amount of time to review the notice and be able to anticipate the pipeline company filing a right of entry application with the CER if the parties cannot reach agreement for the acquisition or lease of lands.</p>
	<p>Lack of information on what “land agreements” are and the “Alternative Dispute Resolution” process.</p>	<p>Consider a hyper link to the “Land Agreements” webpage at the mention of “land agreements”. Consider adding a hyper link to “Alternative Dispute Resolution (ADR)” webpage at first</p>



		mention of “alternative dispute resolution (ADR)”.
Land Agreements	Sections in the Land Matters Guide should use terminology consistent with the <i>CER Act</i> .	CEPA suggests the heading be amended to read “Compensation for Land Rights” and be amended to say “The company must compensate you for the acquisition of land rights including any restrictions on the use of the land and any injurious affection to the land; as well as any damages caused by the Company’s activities. A complete list of what must be in an agreement for the acquisition or lease of lands is found in section 321 of the <i>CER Act</i> .”
	Unclear explanation of option agreement in the following sentence - <i>However, if the company exercises the option within the time specified, the terms of the option agreement come into effect.</i>	Should be amended to read “... the terms of the land agreement come into effect.”
	<i>‘What if you do not sign the agreement?’</i> heading lacks clarity.	Consider adding a hyper link to “Right-of-Entry Orders” webpage at first mention of “right-of-entry order”.
Land Use Compensation	Direction to where to find additional information is needed in multiple areas.	Consider adding a hyper link to “Alternative Dispute Resolution (ADR)” webpage at first mention of “alternative dispute resolution (ADR)”. Consider including a hyper link to the “Compensation Disputes Process” fact sheet. Consider including a hyper link to the “Complaint Form” at the first reference to “Complaint Form”.



		<p>Consider including a hyper link to the “Compensation Dispute Hearing Application” at the first reference to “Compensation Dispute Hearing Application”.</p> <p>Consider directing reader to definition of “without prejudice” below at first reference to “without prejudice”.</p>
	<p>The definition of “restricted” is not clear in the context of when a landowner can bring a claim against a pipeline company for compensation for <i>“lands whose use is restricted by the Prescribed Area, whether or not the lands were acquired, leased or taken”</i></p>	<p>Provide a definition for “restricted”.</p> <p>Placing a one call does not constitute any restriction. The companies have no right to restrict the land use outside their purchased right-of-way unless such a land use would cause risk to the safe operation of the pipeline or compromise its integrity (e.g., blasting activities).</p> <p>Under the <i>CER Act</i>, the company has to compensate not only for the area taken but also for any injurious affection.</p> <p>In addition, property law is based on the principle “no taking without compensation” (taking can be imposition of certain restrictions on the land use for a good and valuable consideration). Has the CER looked at federal and provincial legislation dealing with property rights?</p>
	<p>The guide content includes the following: “If the amount the Commission awards a person in its compensation decision is 85% or less of the amount of compensation offered by the company, costs are discretionary; that is, the company may be ordered by the Commission to pay some or all of the applicant’s costs.”</p>	<p>The content could be written consistently with the <i>CER Act</i>; section 330 (2): “.....and the Commission may by order, direct the company or <u>any other party to the proceedings</u> to pay the whole or any part of those costs.”</p>
Construction and Operations	<p>This section is not consistent with the language used in the <i>CER Act</i></p>	<p>CEPA recommends wording in this section be amended to read: “before you conduct any type</p>



		of ground disturbance near a pipeline or within 30m from a pipeline you must acquire the pipeline company's written consent. Visit "clickbeforeyoudig.com for more information).
	Lack of information related to temporary vehicle crossings.	CEPA recommends adding "You must also acquire the pipeline company's written consent to operate certain vehicles or pieces of mobile equipment within the company's pipeline right of way. If you are unsure if your vehicle or equipment requires consent, please contact the company directly." There are exceptions for agricultural activity set out in the CER Act.
End of Life	Introductory paragraph notes that decommissioning is to temporarily remove from service. Deactivation is the activity to temporarily remove something from service. The descriptions for decommissioning and abandonment provided below the introduction are correct.	CEPA recommends the paragraph be revised as follows: "The CER requires the company to make sure all necessary precautions are taken for safe decommissioning or abandonment of the pipeline or facility. This includes issues like use of the land, ground settling, soil erosion and land restoration. If a company decides to take a pipeline out of service temporarily (decommission) or permanently (abandon) a pipeline, the operator must file an application with the CER. See how you can get involved on the pages below."
	The pipeline company's obligation in the introductory paragraph is not clear. It is unclear what is meant by "This includes issues like use of the land, ground settling, soil erosion and land restoration".	Suggest revising to "This includes any land rights or land use issues, and where the pipe is removed from the ground, any issues associated with the restoration of the lands, any soil erosion or ground subsidence issues."
Abandonment of a Pipeline	It is not clear as to what restoration work would be necessary when a pipeline is abandoned in place.	The intention here may have been to say: "Even after the pipeline is abandoned in place (or



		<p>even after a pipeline company has met the conditions of the CER to abandon a pipeline in place) pipeline companies have an ongoing responsibility to landowners and the public to ensure the pipeline right-of-way and associated facilities remain safe.”</p> <p>If it was intended to provide some information on the company’s obligation to restore the lands then CEPA suggests adding: “if the CER approves the pipeline company removing a section of the pipeline, the Company is obligated to restore the land and to address any subsequent issues including any subsidence or ground settlement.”</p>
<p>Damage Prevention</p>	<p>The right-of-way description could be revised with some additional information on where the width of the right-of-way is specified.</p>	<p>The revisions to the right-of-way description should include: “The width of the right-of-way is typically specified in the right-of-way agreement. The width of the right of way can vary from parcel to parcel, and even within a single land parcel. When in doubt, please contact the company or obtain a copy of the registered right of way agreement.”</p>
<p>Damage Prevention</p>	<p>The updated Landowner Guide describes only the regulatory requirements; however, pipeline easements that are restrictive in nature also stipulate that a landowner must obtain consent prior to ground disturbance or refrain from certain land uses.</p>	<p>Explanation and further information could be provided on the difference between regulations and contractual obligations embedded in the registered right of way agreements. Apart from the legislation and regulations, pipeline operator’s consent to ground disturbance activities and certain land uses is typically required under the right of way agreement between the landowner and the company.</p> <p>1.Explain what the Prescribed Area is. The suggested explanation is as follows:</p>



The CER Damage Prevention Regulations – Authorizations provides that the prescribed area extends 30 metres in both directions from the centreline of the pipeline. The intent of the prescribed area is to ensure:

- the protection of pipelines from damage that may result from activities causing ground disturbance; and
- the safety of all persons living or working near the pipeline.

Any ground disturbance activity within 30 metres (100 feet) from the centre of the pipe requires the pipeline owner/operator's review and assessment of any potential impact of the proposed activities on safe operations of the existing pipeline infrastructure. To ensure the works near pipelines are conducted safely, pipeline safety considerations and instructions from the pipeline operator will be issued to you in the form of a 30 metre / 100 foot permit.

2.Explain the right of way agreement between the landowner and company and that the agreement typically stipulates a condition for the landowner to obtain consent from the company prior to any ground disturbance activities. The suggested message is as follows: In addition to the safety requirements within the Prescribed Area as per the Damage Prevention Regulations, there are also land use restrictions within the right-of-way area contemplated in the right-of-way agreement between the pipeline company and landowner.



		<p>The right-of-way agreement prohibits land uses within the right-of-way that are incompatible with the pipeline operation and maintenance. The right-of-way agreement also requires a landowner to obtain consent from the pipeline company prior to excavation and ground disturbance activities within the right-of-way area.</p> <p>3. Explain that normal agricultural activities are allowed. The suggested message is as follows: Normal agricultural activity, at a depth no greater than 45 centimetres (1.5 feet), is permitted over the right-of-way. Agricultural activity includes any work of producing crops and raising animals and includes plowing, disking, harrowing and pasturing. It does not include the construction of new buildings or impervious areas or the placement of footings, foundations, pilings or posts, including fence posts. Farming or deep tillage at a depth greater than 45 centimetres (1.5 feet) can impact safe pipeline operations, as well as landowners and their property, the public and the environment. If any deep tillage is planned, please notify the pipeline operator by calling your local One Call centre.</p>
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