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Regulator

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File OF-Fac-ElecGen-PLDP-01
13 September 2019

To: Holders of certificates for international power lines under the jurisdiction of the
Canada Energy Regulator

Order MO-041-2019 – Obligations Order

The Commission of the Canada Energy Regulator (CER) has issued the attached Orders: MO-041-2019 – Obligations Order and Order MO-040-2019 – Authorizations Order with cover letter. The Obligations Order applies to the holders of certificates for international power lines regulated by the CER, as listed in Annex 1 of the Obligations Order.

The *Canadian Energy Regulator Act* (CER Act) came into force on 28 August 2019 and replaces the *National Energy Board Act* (NEB Act). The CER Act updates the power line damage prevention provisions that were in the NEB Act and as a result, the existing *Power Line Crossing Regulations* must be updated. The regulatory development process is ongoing, and updates will be provided when available. The CER appreciates the contributions from those who provided comments.

As an interim measure for the safety and security of persons and the power lines, and the protection of property and the environment, the Commission has issued these Orders in relation to conducting specified activities near CER-regulated power lines.

The Obligations Order (MO-041-2019) sets out the requirements that holders must follow when a person requests an authorization to construct a facility near a power line, or to conduct an activity that would cause a ground disturbance within the prescribed area, or to operate a vehicle or mobile equipment across a power line.

A reciprocal Order (MO-040-2019) – the Authorizations Order, has been issued for those persons seeking authorization to conduct these activities, as noted above.

The Commission directs you to publish the Orders MO-041-2019 and MO-040-2019 together with the cover letters on your website and to make this information publically available.

The Commission also directs you to provide copies of the two Orders and the cover letters to those persons and stakeholders who could be potentially impacted by these Orders.

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The Commission has issued these two Orders as it considers they are necessary for the safety and security of persons and the power lines, and the protection of property and the environment.

The Orders MO-041-2019 and MO-040-2019 are published on the CER website at <http://www.cer-rec.gc.ca/bts/ctrq/gncr/index-eng.html>.

If you have any questions or require further information on this matter, please contact Shannon Neufeld, Technical Leader, Damage Prevention, at 403-389-6244 or shannon.neufeld@cer-rec.gc.ca or Chantal Briand, Regulatory Policy Team at 403-389-1209 or chantal.briand@cer-rec.gc.ca. If you have any more general questions, you can also reach us by calling 1-800-899-1265 or sending an email to DPinfo@cer-rec.gc.ca.

Yours truly,

Original signed by

L. George
Secretary of the Commission

Attachments: MO-041-2019 – Obligations Order
MO-040-2019 – Authorizations Order and cover letter



ORDER MO-041-2019

IN THE MATTER OF the *Canadian Energy Regulator Act* (Act); and

IN THE MATTER OF the provision of directions required for the safety and security of persons and power lines, and the protection of property and the environment under section 66, paragraph 92(c), subsection 95(2), and subsection 275(1) of the Act.
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BEFORE the Commission of the Canada Energy Regulator (the Commission) on 12 September 2019.

WHEREAS the Act updates the damage prevention provisions that were in the *National Energy Board Act* (NEB Act) for safely conducting activities near power lines described in subsection 271(1) (power lines);

AND WHEREAS as a result of the coming into force of the Act it is necessary to set out the requirements that holders of certificates for power lines (holders) must meet when providing authorizations to conduct activities specified in subsections 273(1) and (2) of the Act, so that the activity can be carried out safely;

AND WHEREAS the Commission may authorize a holder to give an authorization referred to in paragraph 275(1)(i) of the Act;

AND WHEREAS the *Power Line Crossing Regulations* (Regulations) made under the NEB Act remain in force until the new regulations come into force and repeal them, and that section 4 of these Regulations continues to operate for construction of a power line that passes on, over, along, or under a facility under subsections 272(1) and (4) of the Act;

AND WHEREAS section 3 of the Regulations is now inconsistent with the Act as a result of the changes introduced by the Act for the purpose of subsections 273(1) and (2);

AND WHEREAS the Commission has determined that due to these inconsistencies it is necessary for interim measures to be put into place that provide for the safety and security of persons and power lines, and the protection of property and the environment;

AND WHEREAS the Commission has determined that the holders listed in Annex 1 attached must comply with this Order which will be referred to as "Obligations Order";

IT IS ORDERED that, pursuant to section 66, paragraph 92(c), subsection 95(2) and subsection 275(1) of the Act, the holders of certificates must comply with the following measures:

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Definitions

1. The following definitions apply in this Order.
 - (a) Act means the *Canadian Energy Regulator Act*;
 - (b) “authorization” means the authorization referred to in paragraph 275(1)(i) of the Act;
 - (c) “holder” means the holder of a certificate issued under Part 4 of the Act in respect of a power line;
 - (d) “power line” means a facility referred to in subsection 271(1) of the Act;
 - (e) “prescribed area” has the meaning assigned in section 2 of the Authorizations Order (MO-040-2019);
 - (f) “working day” means any day that is not a Saturday or a holiday as defined in the federal *Interpretation Act*;
 - (g) “CER” means the Canadian Energy Regulator referred to in section 10 of the Act.

One-call centre

2. (1) If a holder operates a power line within a geographical area where there is a one-call centre, the holder must be a member of that centre.
- (2) A one-call centre is an organization that, for the purposes of protecting the underground infrastructures of its members from damage and ensuring public safety,
 - (a) receives locate requests from persons within a defined geographical area; and
 - (b) notifies its members that may be affected by any proposed construction or by any proposed activity that would cause a ground disturbance, if that construction or activity is the subject of a locate request.

Authorizations and conditions

3. A holder may give authorizations under paragraph 275(1)(c), (d) or (f) of the Act and may require that the authorization be subject to any conditions that the holder considers appropriate.

Locate requests

4. If a holder receives a request to locate the holder's power line from a person that intends to construct a facility across, on, along or under a power line or engage in an activity that causes a ground disturbance within the prescribed area, the holder must, within three working days, after the day on which the request is made, or any longer period agreed to by the holder and that person,
 - (a) inform the person, in writing, of safety practices to be followed while working in the vicinity of the holder's power line and, in case of a ground disturbance, within the prescribed area;
 - (b) mark the location of the underground portion of the holder's power line in the vicinity of the proposed facility or the prescribed area using markings that are clearly visible and distinct from any other markings that may be in the vicinity of the proposed facility or the prescribed area; and
 - (c) provide information to the person that clearly explains the significance of the markings.

Conducting inspections

5. To ensure the safety and security of persons and the protection of property and the environment in relation to an activity that causes a ground disturbance within the prescribed area, the holder must
 - (a) conduct inspections in accordance with the conditions set out in the authorization and in any case in which the holder determines that an inspection is necessary;
 - (b) inspect any underground portion of the holder's power line that is exposed, to ensure that no damage to the line has occurred, before backfilling over it; and
 - (c) in respect of any inspection carried out under paragraphs (a) or (b), make field observations relating to compliance with the applicable measures set out in the Authorizations Order (MO-040-2019).

Reporting

6. Beginning with the year 2021, the holder must, no later than January 31 of each calendar year, provide the CER a report for the previous calendar year that contains the following information:
 - (a) details of any contravention of the Authorizations Order (MO-040-2019);

- (b) details of any damage to its power lines, including the cause and nature of the damage and any related impacts on the reliability of a power line;
- (c) any concerns that the holder may have regarding the power line's safety, security or reliability as a result of the construction of the facility, the activity that caused a ground disturbance or the operation of vehicles or mobile equipment across the line; and
- (d) any action the holder has taken or intends to take or request in relation to the contravention or damage.

Keeping records

- 7. (1) The holder must maintain a record of all construction of facilities across, on, along or under a power line and of all activities that cause a ground disturbance within the prescribed area for the life of that line.
- (2) The record must contain, for each facility or each activity that causes a ground disturbance,
 - (a) a copy of the written authorization given by the holder;
 - (b) in respect of the inspections referred to in paragraphs 5(a) and (b),
 - (i) the name of the person that conducted the inspection,
 - (ii) the date and time of the inspection, and
 - (iii) all findings and observations including any field observations referred to in paragraph 5(c); and
 - (c) the details of any abandonment, removal or alteration of the facility.
- (3) Despite subsection (1), if there is an expiry date set out in the authorization, the holder need only retain the record that contains the copy of the written authorization for a period of 12 months from the day on which the authorization expires.

Damage Prevention Program

- 8. (1) The holder is required to develop, implement and maintain a damage prevention program that must include
 - (a) an ongoing public awareness program to inform the public
 - (i) of the location of a power line,

- (ii) of the locations where the operation of vehicles or mobile equipment across the holder's power lines could compromise the safety and security of persons or the safety or security of the power lines and their components,
 - (iii) of the safety measures to be implemented at the locations referred to in subparagraph (ii) in order to reduce the risks of an incident resulting from the crossing of the power line at that location,
 - (iv) on how to work safely near a power line,
 - (v) on how to report an unexpected situation related to a power line that could endanger life or cause substantial property or environmental damage and that requires immediate action,
 - (vi) on how to report any contact with a power line and if the power line was damaged, the damage caused,
 - (vii) of the services of a one-call centre, if there is one within the relevant geographical area,
 - (viii) on the obligation to obtain an authorization before constructing a facility across, on, along or under a power line, engaging in an activity that causes a ground disturbance within the prescribed area or operating vehicles or mobile equipment across a power line, in the case of a vehicle or mobile equipment that is not operated within the travelled portion of a highway or public road,
 - (ix) of the information to be provided in a request for authorization to construct a facility across, on, along or under a power line, to engage an activity that causes a ground disturbance within the prescribed area or to operate a vehicle or mobile equipment across a power line, and
 - (x) on the obligation to make a locate request and on how to make a locate request;
- (b) a process to ensure a timely response to locate requests;
 - (c) a process for locating and marking any underground portion of a power line; and
 - (d) a process for managing requests for authorization to construct a facility across, on, along or under a power line, to engage in an activity that causes a ground disturbance within the prescribed area or to operate a vehicle or mobile equipment across the power line.

- (2) A holder is not required to establish a new damage prevention program if the holder already has one, as required by the conditions of the certificate, and that program meets the requirements of subsection (1).
 - (3) A holder must establish a damage prevention program within 12 months after the day on which the certificate is issued or within a time limit set out in the conditions of the certificate.
9. A holder that has been issued a certificate authorizing the holder to construct or operate a power line, under the NEB Act before this Order was issued, must establish a damage prevention program within 12 months after the day on which this Order comes into force, or within a time limit specified or set out in the conditions in the certificate.

THE COMMISSION OF THE CANADA ENERGY REGULATOR

Original signed by

L. George
Secretary of the Commission

Attachment – Annex 1. Holders of certificates for international power lines

Annex 1 – Attached to MO-041-2019

Holders of certificates for international power lines

 Holders	 Province	 Certificates
Algonquin Tinker Gen Co.	New Brunswick	EC-III-2, EC-III-3
British Columbia Hydro and Power Authority	British Columbia	EC-29, EC-30, EC-51, EC-III-10, EC-III-12, EC-III-4
Canadian Niagara Power Inc.	Ontario	EC-23
Canadian Transit Company	Ontario	EC-44
Cedars Rapids Transmission Company	Québec	EC-III-24
Detroit and Windsor Subway Company, The	Québec	EC-024
FortisBC Inc.	Ontario	EC-40, EC-41
H2O Power G.P. Inc. / Commandité H2O Énergie Inc. on behalf of/au nom de H2O Power Limited Partnership / Société en Commandite H2O Énergie	Ontario	EC-25
Hydro One Networks Inc.	Ontario	EC-11, EC-12, EC-13, EC-14, EC-15, EC-16, EC-18, EC-III-13, EC-III-20, EC-III-6
ITC Lake Erie Connector LLC	Ontario	EC-056
Lac La Croix Power Authority	Ontario	EC-055
Manitoba Hydro-Electric Board - Régie de l'hydro-électricité du Manitoba	Manitoba	EC-III-14, EC-III-16, EC-III-9, EC-059
New Brunswick Power Transmission Corporation	New Brunswick	EC-1, EC-3, EC-5, EC-III-18, EC-III-7, EC-III-025, EC-III-8
Ontario Power Generation Inc.	Ontario	EC-19, EC-20, EC-21
Quebec Hydro - Hydro-Québec. Hydro-Québec TransÉnergie	Québec	EC-46, EC-47, EC-48, EC-50, EC-7, EC-III-15, EC-III-17, EC-III-22, EC-III-021
Saskatchewan Power Corporation	Saskatchewan	EC-III-19
Teck Metals Ltd.	British Columbia	EC-III-1

TransAlta Utilities Corporation	Alberta	EC-54
TransCanada Energy Ltd	Alberta	EC-III-23
Twin Rivers Paper Company Inc.	New Brunswick	EC-31