



## Filing Manual – s. 1.5 Confidential Filing

The CER is committed to transparency and accountability. As an administrative tribunal, the Commission holds hearings that are open to the public and makes its court record available for public viewing. However, some filings may need to be made confidentially for any of the reasons indicated in sections 60 or 61 of the CER Act. As confidentiality is an exception to the fundamental principle that proceedings are open to the public, the onus is on the applicant to show why such an extraordinary remedy should be granted to keep information in a public proceeding confidential.

Filings may also be made outside of hearings or other proceedings, which may be made available to the public as part of the commitment to transparency. Where a filing is unrelated to a proceeding and is not subject to sections 60 or 61 of the CER Act, a request can also be made of the CER not to make the filing public.

The CER will protect the confidentiality of Indigenous knowledge if provided in confidence pursuant to section 58 of the CER Act. Confidential Indigenous knowledge does not need to meet the requirements described here. In situations where such knowledge is being shared, the CER will discuss the process and requirements with the party who is sharing that information.

Please note that all filings, regardless of whether they are confidential or not, are nevertheless subject to the *Access to Information Act* and *Privacy Act*.

### 1.5.1 Filing Requirements

Applicants for all requests to treat filings confidentially, whether in a proceeding or otherwise, must have sufficient detail and provide:

1. A cover letter containing:
  - a. the request and reasons for the request;
  - b. a summary of the nature of the information to be treated confidentially; and
  - c. a detailed description of why the filing requires confidential treatment.
2. If possible, a redacted version of the filing that can be made public (with redactions to the information requested to be kept confidential).
3. One unredacted copy of the filing that the applicant requests to be kept confidential. The filing must be provided via hand delivery, ordinary mail, registered mail or courier to the Secretary of the Commission in a double sealed envelope under confidential cover.

## Guidance

### *Sections 60 and 61 of the CER Act*

Sections 60 and 61 of the CER Act allow for certain filings to be treated confidentially and protected from disclosure during a proceeding. These sections will generally apply in respect of a filing related to:

- Any regulatory proceeding (i.e., applications filed under the CER Act or any other public hearing process under the CER Act);
- Matters related to condition compliance where the condition is a “for approval” condition of the Commission; and
- In the case of section 61, information that is contained in any order under the CER Act.

For number 1(c) above, the detailed description must indicate under which section or subsection of the CER Act confidentiality is being requested. Given the importance of maintaining open, accessible and transparent proceedings, any request for confidentiality should be as narrow as possible.

The detailed description must also clearly describe how the requirements of that section or subsection are met based on the language in the CER Act:

**60** The Commission or a designated officer may take any measures and make any order that the Commission or designated officer considers necessary to ensure the confidentiality of any information likely to be disclosed in any proceedings under this Act if the Commission or designated officer is satisfied that

(a) disclosure of the information could reasonably be expected to result in a material loss or gain to a person directly affected by the proceedings, or could reasonably be expected to prejudice the person’s competitive position;

(b) the information is financial, commercial, scientific or technical information that is confidential information provided to the Regulator and

(i) the information has been consistently treated as confidential information by a person directly affected by the proceedings, and

(ii) the Commission or designated officer considers that the person’s interest in confidentiality outweighs the public interest in disclosure of the proceedings; or

(c) there is a real and substantial risk that disclosure of the information will compromise the safety and well-being of persons or cause harm to property or the environment.

**61** The Commission or a designated officer may take any measures and make any order that the Commission or designated officer considers necessary to ensure the confidentiality of information that is contained in any order under this Act or that is likely

to be disclosed in any proceedings under this Act if the Commission or designated officer is satisfied that

(a) there is a real and substantial risk that disclosure of the information will pose a risk to the security of pipelines, abandoned pipelines, power lines, offshore renewable energy projects, including buildings, structures or systems — including computer or communication systems, or methods employed to protect them — and the need to prevent disclosure of the information outweighs the public interest in disclosure of orders and proceedings; or

(b) there is a real and substantial risk that disclosure of the information will compromise the safety and well-being of persons or cause harm to property or the environment.

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 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 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.

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.

## Other filings

The CER may also decide not to make certain filings public upon request. Such requests can be made for filings that are unrelated to:

- regulatory proceedings;
- matters relating to condition compliance where the condition is a “for approval” condition of the Commission; and
- information contained in any order under the CER Act.

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.

If the CER is satisfied that the filing should not be made public, it may take measures that it considers necessary to ensure that this is accomplished, subject to specific disclosures as may be appropriate to fulfill the CER’s mandate in conjunction with undertakings or other protective measures as necessary.

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.

**Note:** The CER will continue to treat all Emergency Response Manuals in accordance with Order MO-006-2016, even if treatment is not specifically requested. Therefore, no specific information that is protected from publication is necessary for the filing of Emergency Response Manuals where:

1. The omitted information is substituted with a description of the nature of the protected information and a statement explaining why it is protected; and
2. The filing is made in the following circumstances:
  - a) Outside of a regulatory proceeding; or
  - b) Condition compliance where the condition is not a “for approval” condition of the Commission.

Emergency Response Manuals being filed in the course of a regulatory proceeding or during condition compliance where the condition is a “for approval” condition of the Commission must be accompanied by a request that the CER treat a filing as confidential pursuant to s. 60 or 61 of the CER Act.

**FYI – Order MO-006-2016 Compelling Publication of Emergency Procedures Manuals required under subsection 32(1.1) of the OPR**

With respect to Emergency Procedures Manuals, applicants are reminded that, subject to redaction and exemption provisions set out in *Order MO-006-2016* ([Filing A79720](#)), companies are required to publish the entirety of their emergency procedures manuals applicable to their CER-regulated facilities on their or their affiliate's internet site for public viewing.

The CER anticipates that the version of the Emergency Procedures Manual published on a company's website would be sufficient for filing in most regulatory proceedings. Requests from regulatory proceeding participants for a version to be filed other than the version published on a company's website would be considered on an individual basis by the Commission and be subject to the considerations noted above in Section 1.5 Confidential Filing.

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