



# Filing Manual – Guide N – Applications to Review, Rescind or Rehear

The Commission is authorized to review, vary, or rescind any decision or order it makes, or rehear any application before deciding it, under section 69 of the CER Act.

This Guide addresses filing requirements for applications seeking to overturn and/or rescind a Commission decision or order in its entirety through a review or rehearing. It should be used when a reversal to a Commission decision or order is requested.

Where the request is for a specific variance, such that a Commission decision or order remains the same but a specific detail requires changing (e.g., timing relief or a change to the project specifications), please see Guide O.

Unlike many other types of applications, there are no service standards or time limits associated with applications to review, rescind, or rehear CER decisions.

## Goal

Submissions identify the decision or instrument affected and include the grounds for review or rehearing of the decision or order.

## Filing Requirements

Applications seeking to overturn and/or rescind a Commission decision or order through a review or rehearing must meet the requirements set out in Part III of the Rules, which may be summarized as follows:

1. The application must be in writing, signed by the applicant (the person requesting the review or rehearing) or the applicant's authorized representative, filed with the CER and served on all parties to the original proceeding that gave rise to the decision or order in respect of which the review or rehearing is sought.
2. The application must contain:
  - a. a concise statement of the facts;
  - b. the grounds that the applicant considers sufficient to raise a doubt as to the correctness of the decision or order, or to establish the requirement for rehearing, including:
    - i. any error of law or jurisdiction;
    - ii. changed circumstances or new facts that have arisen since the close of the original proceeding; or
    - iii. facts that were not placed in evidence in the original proceeding and that were then not discoverable by reasonable diligence;

- c. the nature of the prejudice or damage that has resulted or will result from the decision or order; and
- d. the nature of the relief sought.

Note: Although service is required by the Rules, the Commission can change the requirement if the circumstances warrant. Where there are concerns with service, include an explanation of the concerns.

## Guidance

There is no automatic right of review or rehearing. In other words, the Commissions' power under section 69 of the CER Act is discretionary. In past decisions, the Commission has stated this discretion must be exercised sparingly and with caution.

Part III of the Commission's Rules<sup>1</sup> specifies the requirements for applications for review or rehearing. Section 45 of the Rules establishes a discretionary two-step process for review or rehearing applications:<sup>2</sup>

- In the first step, the Commission determines whether the decision or order should be reviewed or the application reheard. In order to find that a review or rehearing is required, the Commission must be satisfied that an applicant has met its onus to raise a doubt as to the correctness of the decision or order under review or has demonstrated that a rehearing is required. Before making its determination, the Commission may, but is not required to, give interested parties the opportunity to file submissions; and
- In the second step, which follows if the first test is satisfied, the Commission considers the review or rehearing application on its merits. In doing so, the Commission may establish a process to govern the conduct of the review or rehearing.

Please note that reviews and rehearings are not meant to be opportunities to re-argue the same points previously raised or to provide new arguments that could have been raised originally, but were not.

An applicant may apply for an order staying the decision or order in respect of which a review is sought pending the review or staying the original proceeding pending the rehearing by meeting the requirements of section 47 of the Rules.

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<sup>1</sup> [The National Energy Board Rules of Practice and Procedure, 1995](#), SOR/95-208 (Rules) outlines the requirements for Commission hearings.

<sup>2</sup> In some instances the Commission may decide to combine step 1 and step 2 of a review or rehearing application.