Canadian Electricity Association | Association canadienne de l'électricité

DAMAGE PREVENTION FRAMEWORK

CEA Initial Feedback

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Introduction and Context – CEA Input on Proposed Damage Prevention Framework

The Canadian Electricity Association (CEA) is appreciative of the opportunity to submit input into the regulatory development process for the proposed *Canadian Energy Regulator Act* (CER); and specifically, *Discussion Paper: Damage Prevention Framework for Federally Regulated Power Lines*.

Founded in 1891, CEA represents a broad range of companies that generate, transmit, distribute, and market electricity to industrial, commercial, and residential customers across Canada. With over 80% of Canadian electricity generation non-greenhouse gas emitting and growing, CEA member companies are committed to delivering reliable, affordable, and sustainable electricity to power Canada's economy and to fuel the country's clean energy transition.

Thus, the Canadian electricity sector is an important stakeholder in the CER's regulatory development process. CEA would like to note that not all members are aligned on all feedback and recommendations presented here. This submission was developed in consultation with Alta Link, ENMAX, Hydro One, Hydro Quebec and Manitoba Hydro, but Manitoba Hydro will be providing an additional separate submission on this Discussion Paper.

Feedback specific to the Discussion Paper's questions are offered in this submission. However, CEA requests that NRCan and NEB consider further and continued discussions with the electricity sector on this proposed regulation. CEA members are concerned that as the NEB moves to further clarify these points, this will require another round of industry input in order to guard against unintended and/or unnecessary increases in operational or process requirements for those operating near, or owning International Power Lines (IPLs).

Therefore, CEA respectfully requests that an industry task group with representation from the electricity sector be commissioned to review and provide a final submission, which includes operational recommendations, to NRCan and the NEB in regard to these regulations. In particular, CEA recommends that this industry task group be afforded the opportunity to provide feedback and comments in advance of the publication of the proposed regulations in the Canada Gazette for a 30-day comment period. Industry alignment on the proposed regulations prior to publication is the most effective way to ensure a smooth and expedient approval process, and thereafter, implementation of the regulations.

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Question 1. Is a prescribed area of 30 metres on either side of the federally regulated power line adequate to maintain safety and prevent damage to the power line?

- **CEA's general feedback:**

  Some CEA members find that the 30 metre prescribed safety area from powerlines lacks clarity in terms of delineation. For instance, it is unclear whether this distance is from the centre transmission line, or some other point. CEA members also find this area to be arbitrary, as powerline swing (from the wind), electric field strength and voltage are better determinants of safety and security. It is also important to include other considerations such as adjacent powerlines.

  Moreover, CEA advises that provincial/territorial regulations exist in many cases, which should be deferred to as they address these issues. Specifically, existing rights of way (ROWs) are granted to powerlines, which generally account for all the considerations above. Where at all possible, subnational regulations such as these should be deferred to, especially in the case of new Ultra High Voltage Lines, in which case 30 meters may be an arbitrary and insufficient distance, and provincial/territorial rights of way be better suited.

  There is also more clarity needed around section 271(1) of the CER Act. This is described in greater detail below.

- **Specific CEA recommendations:**

  - As described above, CEA finds the current "30 meter" requirement to be unclear and arbitrary. I.e. is it delineated from the centre of the line, or either side of line? Additionally, 30 metres may sufficient for some lines and too little for others based on line swing, electric field strength and voltage. Moreover, a distance of 30 meters may be ineffective for emerging transmission technologies/capacities. CEA advises that utilizing the edges of existing ROWs as a starting point for the safety area may serve as a better starting point, as these are established with the above factors in mind.

  - There is also more clarity needed around section 271(1) of the CER Act. Page 1 of the Discussion Paper states: "Power lines that cross international borders are federally regulated…." This intended scope of the regulation is inconsistent with

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the CER Act. Provincial legislation has been retained as an option under Bill C-69. Regulations cannot exceed the scope of their enabling legislation.

A clearer definition is needed regarding "federally regulated power line" as per section 271(1) of the CER Act, so that the application of the regulations to power lines is clear. Section 271(1) makes clear that the restrictions in sections 272 and 273 of the Act on activities on, along, across or under IPLs only applies to: international power lines with federal election certificates; international power lines that do not have a designated provincial regulatory agency; and interprovincial power lines that have been designated as requiring federal regulation.

Question 2. Are the proposed safety measures adequate to maintain safety and prevent damage to the power line?

- **CEA's general feedback:**

  Overall CEA finds the regulations pertaining to overhead power lines to be too prohibitive. As they are currently proposed, even minor routine ground disturbances, for example agricultural ploughing, will trigger the need for an evaluation by IPL owners.

  Moreover, CEA is concerned that these regulations may also inhibit its members' ability to comply with any applicable NERC vegetation management standards, as many of the activities associated with these will trigger safety authorizations.

  Therefore, CEA recommends that an industry task group be created to make operational recommendations on this topic to NRCan/NEB before the regulations are finalized, in order to reduce the amount of applications for authorization to the Commission, as described above.

- **Specific CEA recommendations:**

  - As different safety conditions apply depending on whether IPLs are overhead or underground IPLs, CEA's recommendations are specific to overhead power lines; as CEA does not expect many instances in the near future where IPLs are buried underground due to financial and technical implications. Therefore, CEA is reserving comment on the aspects of the regulations dealing with underground lines. CEA

recommends further industry engagement, as per the recommendation directly above, in order to arrive at industry consensus on this issue.

- Overall, CEA finds the definition of "ground disturbance" to be too broad as it will capture routine agricultural practices, such as plowing by farmers, on lands that have granted easements to the holder of the IPL authorization. These activities should be excluded as it is possible that they may lead to operational paralysis as a result of requiring IPL owners to evaluate a multitude of ground disturbance incidents, i.e. every touch/dig.

  Thus, CEA recommends that "light" ground disturbance be excluded (unless other circumstances warrant that it be included). In this regard, the minimum ground disturbances for pipelines should be adopted for IPLs.

- CEA is also concerned that many of these regulations may also inhibit its members' ability to comply with any applicable NERC vegetation management standards, as many of the activities associated with managing vegetation will trigger safety authorizations under the current definition of "ground disturbance".

Question 3. What other considerations, if any, need to be taken into account when a holder responds to a request for authorizations?

- **CEA's general feedback:**

  CEA's primary considerations regarding requests for authorizations are the definition of activities requiring authorizations, and the timelines and criteria associated with the responses for these requests. CEA requests clarification in the final regulation on the timelines associated with this request process; the criteria that should guide IPL owners in responding; and the information that applicants will be required to provide when requesting authorization

- **Specific CEA recommendations:**

- Clear and realistic timelines should be developed that detail when an IPL owner is expected to provide a response to a locate request. Similarly, in reviewing requests for authorizations, detailed review of the proposed activates will be required. Therefore, the requester should be required to provide all necessary information, such as drawings,

scope of work and construction methodology and techniques; which will be required by holders to make informed judgements on the request.

To guide this process, clear guiding criteria for accepting or denying requests for authorizations must also be developed, and the holders (utilities) need to be given sufficient time to provide a response.

Industry alignment will be required in order to develop proper criteria for approving/denying authorizations.

- CEA also notes that as this regulation drastically increases the current operation processes, sufficient transition time must be provided to IPL owners, in order to comply with the new regulations. CEA is to meet with NRCan/NEB in early 2019 in order to advise on the necessary transition period, and a follow-on industry task group will also be able to further expand on this.

Question 4. What other considerations, if any, need to be taken into account when making a locate request prior to conducting work near a federally regulated power line?

- **CEA's general feedback:**

As per CEA's comments above, the definition of "ground disturbance" is found to be too broad. Moreover, guidelines in terms of necessary information that must be provided by those making authorization requests is insufficiently defined, as is the criteria to be used by industry in making decisions pertaining to these authorization requests.

This lack of clarity is found by CEA to risk introducing operational inefficiencies and paralysis. CEA also finds there to be a lack of clarity in terms of what type of work near powerlines does not require an authorization. Clarity in this regard would assist in ensuring that IPL owners are not inundated with authorization requests.

- **Specific CEA recommendations:**

- As currently written, the regulations would require a locate authorization each time that routine farming operations occur near IPLs. This is impractical and would severely restrict the use of land owned by farmers that is under easement by holders. CEA recommends that routine farming operations, and work being conducted near overhead lines, which adheres to Canadian Standards Association (CSA) standards be exempted. Furthermore,

CEA recommends that "routine" categorization of farming operations be established based on depth of soil disturbance thresholds, to provide clarity when assessing whether locate requests are required.

- CEA also advises that when making locate requests, requesters be required to have intersecting ROWs or infrastructure validated by an accredited land surveyor. This is important, so as not to overburden IPL owners, and so that this requirement logically rest with the requestor and not with the IPL owner.

- Restrictions on the operation of a vehicle or equipment, and the requirement of a locate request for ground disturbances, should not apply to the holder.

Question 5. Do you have any comments on the proposed requirement for a holder to be a member of a One-Call Centre?

- **CEA's general feedback:**

  A number of CEA members find the requirement for a holder to be a member of a One-Call Centre to be a reasonable one. These members find that transmission license holders should be a member of One-Call Centres in order to be aware of all requested activities around their power lines. That being said, CEA also advises that this requirement does not account for underwater powerline or new technologies in the future that increase the use of underground construction of federally regulated powerlines.

  CEA members would also appreciate more clarity on the "One-Call Centre", including a list of existing One-Call Centres and contact information.

  It is uncertain whether the public can reasonably distinguish between a federally and provincially regulated transmission lines, and CEA would discourage the development of a solution that directs the public to associate calls with one call centre or another. Instead, CEA recommends that all calls be handled provincially, with the receiving provincial contact following federal guidelines for the lines that fall under federal regulation.

  It is unclear to CEA whether the intent is that this One-Call Centre will be the same centre that applies to pipelines? And whether the same process that applies to pipelines (recently updated in 2016) will apply to power lines? Or will the pipeline process be changing too?

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Question 6. Do you have any other comments on the requirements for construction of federally regulated power lines near facilities?

- **CEA's general feedback:**

  In relation to CEA's comments above, provincially/territorially administered ROWs take into consideration the issues relating to facilities that are being addressed by these requirements. Therefore, as recommended above, it is advised that these requirements defer to provincial/territorial ROWs.

  Furthermore, as per the response to the question above, vehicles operating under or around powerlines should only require crossing permits when their clearance requirements exceed CSA standards. This exemption is essential in order to avoid overbearing requirements for authorization by routine operations such as agricultural activities, which could unduly inundate both IPL owners and those operating near IPLs with process and operating requirements.

  Finally, more clarity must be provided on what is referred to in the requirements as operating "across" overhead powerlines.

- **Specific CEA recommendations**

  - Strictly speaking, vehicles and equipment are not operated "across" overhead power lines themselves, as worded in s. 273(2) of the Act. Therefore, it is not clear what distance from the overhead power line is being considered "across" the overhead power line. The section or the regulations should refer to a distance or a defined ROW. In this regard, existing provincial/territorial ROW for power lines should be wide enough to accommodate transmission line swing, so an adjacent land owner can use their property unencumbered.

  - Crossing permits for vehicles should only be required when the crossing vehicles are a high load or differ from standard land use. The CSA code requires powerlines to have clearances sufficient for the land use. Agricultural land has high clearance requirements due to sprayers. If the intent is to have this provision as an extra layer of protection, then it is acceptable. With proper power line design, vehicle crossings should not be concern.

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Question 7. What other considerations, if any, need to be taken into account for a holder to have a damage prevention program for power lines?

- **CEA's general feedback:**

CEA members wish to express concern regarding the remuneration model, for what is, under the proposed framework, an increase in the operational and process requirements for IPL owners. It might be appropriate that a reasonable fee be allowed to be collected for reviewing applications/proposals and providing responses to requesters. Further consultation with industry could best assist with clarifying these issues.

CEA also advises that post-construction reports declaring the fulfillment of obligations under these regulations be required for those authorized to perform work near, or across, IPLs.

In addition, "the location of the underground continuous counterpoise" should be added to the list, after "the location of the powerline".

To reiterate, as many of the recommendations made by CEA in response to both this, and other questions, will require further clarification, CEA recommends that an industry task group be established to make recommendations on a damage prevention program for consistency, and that this be done before the regulations are finalized.

Question 8. Is a period of three months from the coming into force of the proposed regulations to develop and implement a damage prevention program sufficient?

- **CEA's general feedback:**

As NRCAN and the NEB have indicated to CEA that there will be more detail in some of the regulations than the drafts provided; industry will need time to understand the final regulations and develop business plans including a damage prevention program. As these regulations will touch both utility operations and customer relations departments, they will result in the need for training time on the part of utilities.

CEA recommends at a minimum, a 12-month transition period, and this is assuming that an industry task group is convened to input on the next detail of regulations, in order to ensure that this transition period is realistic.

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Question 9. Are there any other comments related to the proposed regulations that you would like to provide?

- **The following are a number of specific recommendations and concerns from CEA members pertaining to the proposed Damage Framework Regulations:**

  - For efficiency, all exclusions to requirements outlined in this regulation should be made explicitly clear (i.e. IPLs located on provincial crown land where operation of vehicles is already authorized by provincial legislation, etc.).

  - If pipelines cross underneath powerlines or run parallel, corrosion mitigation should be installed on the pipelines.

  - The term "along" in sections 272(1)&(2), 273(1) and 275(1) should be defined, as it is not clear how close an IPL needs to be to a facility in order for them to be considered "along" each other.

  - The restriction on causing a ground disturbance in a "prescribed area" is contained in a separate sentence of s. 273(1) and can be interpreted as a separate restriction that does not relate to/modify the prior restriction on construction of a facility. Section 272(1) has no reference at all to a prescribed area.

  - The proposed definition of "holder" should exclude reference to a permit, as permits are not issued for federally regulated power lines.

  - More information on the actual "safety" issue the NEB is trying to rectify and examples would be helpful in understanding why this damage prevention program is required, especially for overhead power lines.

  - The NEB, similar to many of the points above, needs to consider the impact on existing ROWs and easements and the operational impact of having to review them all (and potentially revise/amend).

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Concluding Remarks

CEA thanks the NEB and NRCan for the opportunity to comment on the proposed Damage Prevention Framework regulations for the CER.

As identified at the outset of this document, CEA was unable to obtain consensus on many of the questions in this discussion paper. Therefore, it is advised that a further level of industry review would be reasonable.

For these reasons, CEA respectfully requests that an industry task group with representation from the electricity sector be commissioned to review and provide a final submission, which includes operational recommendations, to NRCAN and the NEB in regard to these regulations.

In particular, CEA recommends that this industry task group be afforded the opportunity to provide feedback and comments in advance of the publication of the proposed regulations in the Canada Gazette for a 30-day comment period. Industry alignment on the proposed regulations prior to publication is the most effective way to ensure a smooth and expedient approval process and thereafter, implementation of the regulations.

CEA looks forward to the opportunity for further engagement with the NEB and NRCan on these regulations.

Sincerely,
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