



Guidance for Collaboration and Alignment Across the Canada Energy Regulator Governance Structure

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Purpose

This document is a Canada Energy Regulator (CER) governance tool and is approved by the Board of Directors (Board), in consultation with the Commission and CEO. It provides guidance on, and describes internal mechanisms designed to facilitate effective collaboration and strategic alignment between the Board, Commission, CEO and Indigenous Advisory Committee (IAC). The guidance expands on the CER's foundational governance tool - ['Governance of the Canada Energy Regulator – Mandate, Roles and Responsibilities'](#) (Roles and Mandate Document).

The processes and mechanisms described in this guidance promote:

- exemplary governance
- accountability in achieving the CER's legislative mandate
- strategic alignment, a shared sense of purpose, and learning across the governance structure
- fulfillment of the Board's responsibility to provide strategic direction and advice to the CER
- protection of the Commission's adjudicative independence in discharging its mandate

This document will be reviewed no less than every three years and updated as may be required.

Summary of roles and responsibilities

This section contains a summary of the roles and responsibilities of the Board, Commission CEO, and IAC as relevant to this guidance.

The **Board of Directors** is responsible for the governance of the CER, including its core responsibilities of Energy Adjudication, Safety and Environment Oversight, Energy Information and Engagement.¹ The Board is accountable to the Minister of Natural Resources for ensuring that the CER delivers effectively on its mandate and is appropriately aligned with government policy. The Board approves the CER's Strategic Plan and oversees the CER's performance through its Departmental Results Framework and Internal Services Framework.

¹ This includes oversight and strategic advice and direction on expected results, outcomes and associated metrics, and performance against those metrics.



In setting strategic direction for the CER, the Board is guided by the [Canadian Energy Regulator Act](#) (CER Act), including its preamble reflecting Canada's commitments to:

- safety, security and protection of people, property and the environment
- enhancing Canada's global competitiveness through predictability, timeliness and innovation
- achieving reconciliation with Indigenous peoples and implementing the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration)
- decision-making informed by best available scientific information and data, and Indigenous knowledge
- transparency, diversity and inclusion

In carrying out its role, the Board acts in a manner that ensures adherence to the purposes and provisions of the CER Act and other applicable legislation and policy direction, and upholds the honour of the Crown, furthering reconciliation with the Indigenous peoples of Canada.

The Board works directly with the IAC, receiving and responding to the IAC's advice, on behalf of and for the benefit of the entire CER. The Board co-develops certain initiatives with the IAC, while maintaining its legislated oversight and decision-making role, including the IAC Terms of Reference and initiatives to implement the UN Declaration.

The **IAC** is an integral part of the CER's governance structure and advises the Board on how the CER can build new relationships with Indigenous peoples. The IAC's work is grounded in reconciliation, with the UN Declaration, Truth and Reconciliation Commission's Calls to Action, and Principles Respecting the Government of Canada's Relationship with Indigenous peoples forming the foundation and providing the roadmap for the IAC's work. The Board and IAC share the goals of establishing strong relationships, and ensuring the IAC's advice has a meaningful, timely and measurable impact on the CER's strategies and work.

The IAC is not a decision-making body, nor does it engage in CER operational matters or provide advice on any particular decision, order or recommendation made by the Commission or other CER adjudicative decision-makers.

The **Commission** is responsible for making adjudicative decisions and recommendations pursuant to the CER Act and other legislation. The Commission is part of the CER and contributes to the overall effective delivery of the CER's mandate, operating in a manner consistent with the strategic direction of the CER while maintaining its adjudicative independence. The Commission's adjudicative independence is a key element of the CER's mandate. In carrying out its adjudicative role, the Commission adheres to the CER Act, informed by its preamble, s. 35 of the *Constitution Act, 1982*, Part III of the *Official Languages Act*, and the rules of natural justice.



While the Commission does not set the CER's strategic direction or priorities, the Commission is consulted and provides input into the Board's strategic planning and decision-making, as appropriate and maintaining its adjudicative independence. As part of this, the Commission may identify and communicate to the CEO and Board broader requirements or improvement initiatives that would support the effective delivery of the Commission's mandate.

The **CEO** is responsible for managing the CER's day-to-day business and supervision of CER staff and for providing the support services and facilities needed by the Commission to exercise its powers and perform its duties and functions. The CEO also provides support and resources needed by the Board and the IAC in the execution of their mandates. The CEO is accountable for ensuring IAC advice is communicated throughout the organization, meaningfully considered and responded to by CER management and staff, and implemented as required.

The CEO has the rank and the powers of a deputy head. This means that the CEO has multiple accountabilities – to the Board, the Minister, and other bodies such as the Treasury Board and the Public Service Commission. Among other things, the CEO is the accounting officer for the CER under the *Financial Administration Act*, and is responsible for and holds final decision-making on matters of resource allocation and expenditure. The CEO is accountable for management of CER finances, human resources and labour relations, and for compliance with various Treasury Board policies and directives, such as those relating to risk, asset management and acquired services, information management and technology, people management, security, and official languages.

In exercising their role, the CEO leads external engagement activities of the CER, with the strategic advice and direction of the Board, and serves as the authoritative CER spokesperson. The CEO leads and oversees the implementation of the Board's strategic direction, as expressed through, for example, the Strategic Plan and Departmental Plan. The Board's strategic direction informs the CEO's leadership and how all CER staff carry out their work. CER staff, including management, under the supervision of the CEO, supports both the Board and Commission in carrying out their roles. The CEO ensures that the Commission has been consulted and its input is reflected as appropriate into proposed implementation strategies presented to the Board.

The primary roles of the **Chief of Staff** and **Secretary of the Commission** are to provide support to the Board, CEO and IAC, and the Commission, respectively. The Chief of Staff and Secretary report to the CEO and work together to promote the functioning of and strategic alignment across the CER governance structure. They facilitate the collaboration and alignment mechanisms described in this guidance.



Shared interests

While the Board of Directors, Commission, CEO and IAC have unique roles and responsibilities,² they are interdependent. Communication, consultation, and collaboration is necessary in areas of shared interest to achieve strategic alignment and effective delivery of the CER's mandate. Working in a manner that is misaligned, inconsistent or at cross-purposes gives rise to material organizational risk. When communicating and collaborating in areas of shared interest, the Board, Commission, and IAC each strive to share their advice and perspectives through a common or collective voice on behalf of their respective arms of the governance structure where possible.

Examples of areas of shared interests are listed below. It is important to note that, while the Board, Commission, CEO, and IAC have a shared interest and contribute to varying degrees towards achieving positive outcomes in these areas, the roles and accountabilities of each within these areas are different and do not conflict. However, the IAC's mandate and areas of interest align directly with, and are not separate from, those of the Board.

- overarching CER strategy, including development and implementation of Strategic Priorities
- exemplary governance, CER performance and accountability
- continual improvement in CER processes, including through incorporation of learnings, engagement feedback, and best practices
- building meaningful relationships with Indigenous peoples and stakeholders over the full lifecycle of CER-regulated infrastructure
- Providing clarity on how the CER's mandate is to be exercised
- CER regulations and overarching policies of broad application
- identifying and addressing systemic issues within the regulated industry to prevent harm to people, property and the environment
- effective management of urgent issues or emergencies within the CER or with respect to CER-regulated infrastructure
- communication and transparency of CER activities and decisions
- efficient and effective use of human and financial resources in support of all CER activities
- CER alignment with government policies of broad application, including binding policy direction issued under section 13 of the *Canadian Energy Regulator Act*³
- consideration, response and implementation of advice received from the IAC

² Governance of the Canada Energy Regulator – Mandate, Roles and Responsibilities, <https://www.cer-rec.gc.ca/en/about/who-we-are-what-we-do/governance/governance-canada-energy-regulator-mandate-roles-responsibilities/index.html>

³ *Ibid.*



Collaboration and alignment mechanisms

The following mechanisms are in place to assist the Board in ensuring exemplary governance, CER performance, and accountability. Specifically, these mechanisms allow the Board, Commission, CEO, and/or the IAC to regularly collaborate towards strategic alignment and effective delivery of the CER's mandate.

- The delivery of a **Lead Commissioner Update** at quarterly Regular Board Meetings: enables communication of updates, issues, and areas of concern to the Commission and/or Board; collaboration on areas of shared interest; and issue resolution
- The delivery of an **IAC Leadership Update** (IAC Chairperson and IAC Vice-Chairperson) at quarterly Regular Board Meetings or Regular Governance Committee Meetings
- Approximately monthly **leadership meetings** between the Lead Commissioner, Deputy Lead Commissioner, Chairperson of the Board, Vice-Chairperson of the Board and CEO. This mechanism enables collaboration on matters of governance and in areas of shared interest. It also provides a venue for any concerns in these areas to be resolved. Individual Commissioners or Directors do not raise concerns or requests for issue resolution directly with the CEO; they are raised via their respective leadership
- Approximately monthly **leadership meetings** between the Chairperson of the Board, Vice-Chairperson of the Board, CEO, IAC Chairperson and IAC Vice-Chairperson: enables ongoing collaboration on areas of shared interest; and issue resolution
- Approximately weekly or bi-weekly **bilateral meetings** between the Lead Commissioner and CEO, between the CEO and Chairperson, and between the CEO and IAC Chairperson, as well as occasionally between the CEO and individual Commissioners and Directors: enables ongoing collaboration on areas of shared interest
- Approximately bi-weekly **bilateral meetings** between the Chairperson of the Board and the IAC Chairperson: enables ongoing collaboration on areas of shared interest
- Quarterly **Commission Regulatory Update Meetings**: enables collaboration between the Commission, the CEO and CER staff on areas of mutual interest, updates and consultation on CER activities
- Annual or semi-annual **Board-Commission-CEO Governance Roundtable, Joint Learning, and Strategy Meetings**: held as necessary to enable direct communication and collaboration between the full Board and Commission on areas of mutual interest

Ensuring adjudicative independence

The Commission's adjudicative independence is central to the CER's governance structure. The Commission, Board, CEO, IAC, and CER staff all have a positive obligation to protect, support and promote that adjudicative independence. Neither the Board, CEO, IAC, nor CER staff may give direction with respect to any particular decision, order or recommendation that is made by the Commission or a Commissioner. The Commission



relies on advice from the CEO and CER staff for the purpose of discharging its mandate and for use at the Commission's discretion.

In conducting its adjudicative work, the Commission relies on the support services and facilities provided by the CEO, with the CEO responsible for and holding final decision-making on matters of resource allocation and expenditure. The CEO and the Lead Commissioner collaborate on an ongoing basis to ensure that the Commission has the support services or facilities, or other resourcing needs necessary to discharge its responsibilities in a manner that respects the adjudicative independence of the Commission.

The collaboration and alignment mechanism discussed in this Guidance provide opportunities for the Board to communicate to the Commission the Board's general strategic advice and direction for the CER (which is focused on results and outcomes). The Board's strategic advice and direction, as informed by the advice of the IAC, informs all aspects of the CER's work. This includes how the CEO and staff, including management, may support the Commission on adjudicative matters.

Similarly, and in providing the support services and facilities needed by the Commission to exercise its powers and perform its duties and functions, the CEO may also communicate using the collaboration and alignment mechanisms. In addition, the CEO may regularly engage with the Commission directly, verbally and/or in writing, and indirectly, via CER staff who are supporting the Commission. In engaging with the Commission on specific adjudicative matters, the CEO is guided by the same behavioral expectations as CER staff, described below.

The IAC operates in a transparent manner, posting materials to the CER's website, including approved meeting minutes and any final written IAC advice. In accordance with its Terms of Reference, the IAC operates to protect adjudicative independence by focusing its discussions and advice on strategic, policy and program development matters of broader, systemic impact (as opposed to individual or project-specific impact), and refraining from discussing or providing advice on any particular decision, order or recommendation made by the Commission.

If an individual IAC member becomes a participant in a Commission adjudicative proceeding; for example, as an Intervenor in their individual capacity or representing an Indigenous Nation, community, organization or group; they participate in the proceeding in that personal or representative capacity, not in their capacity as an IAC member. They do not identify themselves or speak in their capacity as an IAC member or represent or speak on behalf of the IAC. In the course of carrying out their non-IAC related roles, business and activities, IAC members refrain from holding themselves out as speaking for the CER or IAC, or indicating that they are in a position to provide advice on CER adjudicative matters.

Direct interaction between the Commission and the IAC is relatively infrequent. However, such interaction may be explored at the Commission's option, and in collaboration with the Board and CEO, in support of maximizing the benefit of the IAC's strategic and policy advice on matters of general relevance to the Commission's mandate. Any interaction between the



Commission and the IAC is carried out in a manner that ensures the protection of adjudicative independence, is transparent, and is consistent with the mandate of the IAC and its Terms of Reference.

An advice register, which is an operational tool used to track IAC advice, the Board's response, and the status of implementation, is maintained. The advice register may be shared and discussed with the Commission at regular intervals for ongoing awareness and general consideration. As noted above, the Board and/or the CEO may collaborate with the Commission in relation to considering, responding to, and implementing IAC advice where it relates to areas of shared interest.

As with the CEO, CER staff and management must not provide direction to the Commission. However, as described in Section 6 of the CER's Code of Conduct (Measures to Protect Adjudicative Independence), CER staff and management may provide impartial and candid advice:

The role of an employee supporting or otherwise directly involved in an adjudicative process is to provide impartial and candid advice to the decision-maker. This advice must be based on the employee's general professional experience and expertise; matters of broad public knowledge; and information that is on the record of the adjudicative process. Employee advice may include summaries of, or commentary on, evidence and submissions made during the adjudicative process. CER decisions and recommendations always rest with the decision-maker identified by legislation, regulation, or lawful delegation of authority.

In order to protect adjudicative independence, employees must:

- a) Avoid behaviour that could give rise to a perception of preferential treatment;
- b) Respect and comply with CER adjudicative processes, including pre-application, consultation and hearing processes, and not take steps in relation to an adjudicative matter outside of those processes;
- c) Avoid discussing specific substantive matters at issue in an adjudicative process with any external party (this can be contrasted with matters of a broad and general nature that fall within the CER's mandate);
- d) Avoid substantively coaching or guiding any external party with respect to their involvement in an adjudicative process;
- e) Comply with applicable protocols directed at protecting adjudicative independence⁴;
- f) Avoid providing information or advice to adjudicative decision-makers that could inappropriately influence their decision, such as specific evidence that is not on the record;
- g) Avoid explaining (beyond appropriate summaries or communications materials), justifying, or opining externally on CER decisions or recommendations;
- h) Avoid opining externally on parties or specific issues that have come, may come, or are currently before the CER; and
- i) Remove themselves where possible from any situation where the employee, exercising good judgment consistent with our values and guiding principles, believes that adjudicative fairness or independence could be negatively affected by their continued involvement.

⁴ For example, the Protocol for Protection of Adjudication Independence in the Delivery of the Indigenous Advisory Committee's Mandate, and the Interim Protocol for Interactions Related to Project-specific Crown Consultation.



The following formal mechanisms exist for the CEO and CER staff, including management, to support and provide advice to the Commission on specific adjudicative matters in writing and/or verbally.

- Weekly **Commission Planning Meetings**: enables planning and scheduling of Commission adjudicative business⁵. Attended by the Lead Commissioner, Deputy Lead Commissioner, CEO, Executive Vice-Presidents, Secretary of the Commission, and Chief of Staff.
- Weekly **Commission Meetings**: enables the conduct of Commission business, including adjudicative decisions not otherwise assigned to a Panel. Attended by the Commission, CEO⁶, Executive Vice-President Regulatory, General Counsel, Secretary of the Commission, and other relevant members of senior management and CER staff (depending on the items being considered).
- Commission **Panel Meetings** for the purpose of making adjudicative decisions related to matters assigned to a Panel. Attended by Panel Members and relevant CER staff.⁷

The above formal mechanisms are described in this guidance for the purpose of transparency and are illustrative - not exhaustive. The Commission, CEO and CER staff work together cooperatively and full-time to enable delivery of the CER's adjudicative mandate, including Commission public hearing processes and decisions. This entails regular communication and exchange of advice, whether formally or informally. It also entails following any additional situation-specific operational guidance or protocols put in place to ensure the protection of adjudicative independence.

⁵ For example, a review of upcoming adjudicative matters requiring Commission attention, and decisions by the Lead Commissioner as to whether items should proceed by way of a weekly Commission Meeting, via 'walkaround', or be assigned to a Panel.

⁶ The CEO does not attend every Commission Meeting, depending on the matter being considered and scheduling considerations.

⁷ Project Working Groups made up of CER staff from a variety of disciplines are generally assigned to support, and work directly with, Panels. Project Working Groups are typically led by a Hearing Manager or Technical Coordinator and may include Regulatory Officers, lawyers, engineers, economists, socio-economic specialists, environmental specialists, Process Advisors, etc.