

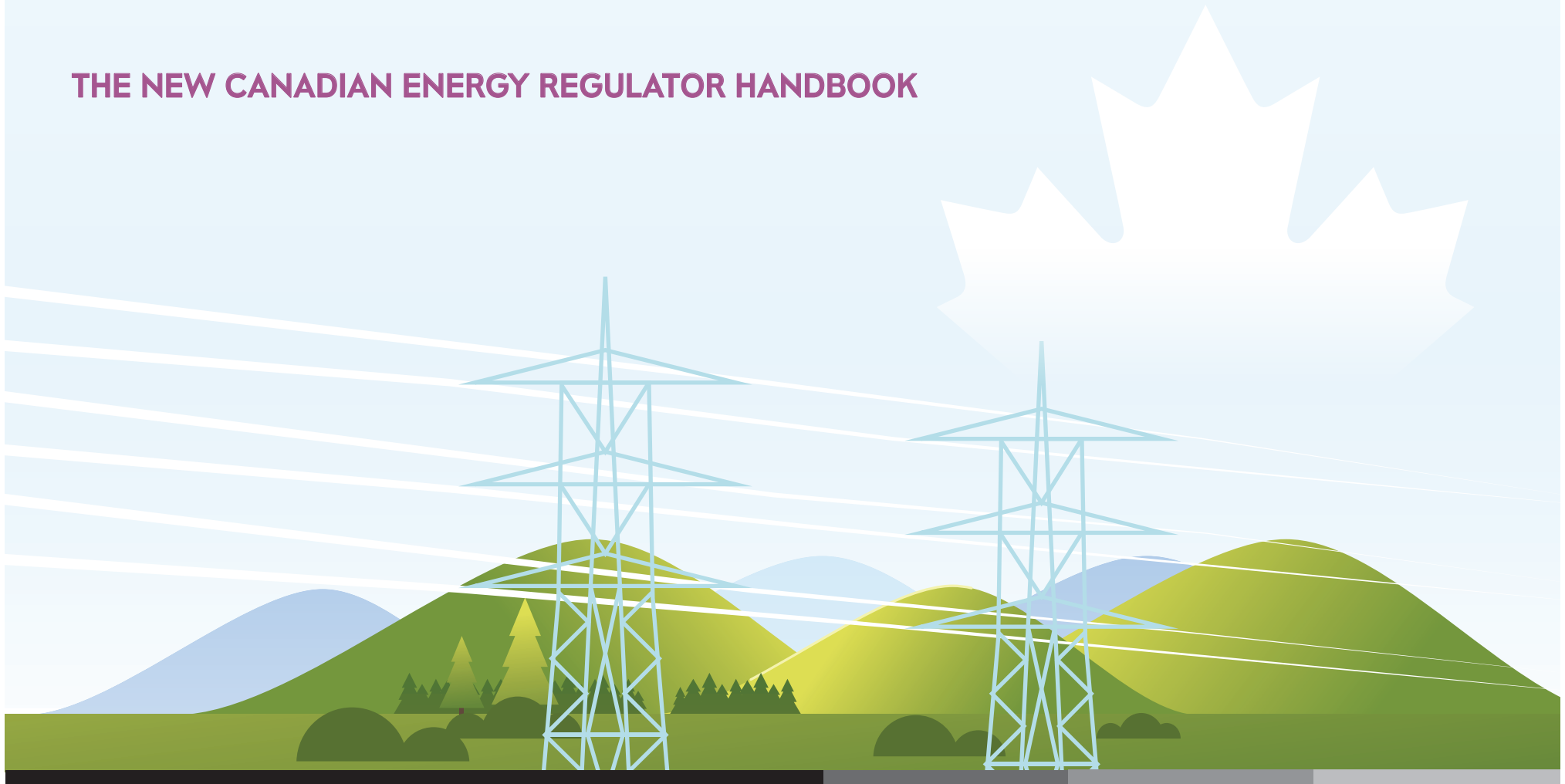


Government  
of Canada

Gouvernement  
du Canada

# A MODERN, NEW AND WORLD-CLASS FEDERAL ENERGY REGULATOR FOR THE 21<sup>ST</sup> CENTURY

THE NEW CANADIAN ENERGY REGULATOR HANDBOOK



# OVERVIEW

## WHAT WE ARE DOING

Canadians understand the importance of energy in our lives. It powers our homes, our schools and hospitals, and our businesses and factories. It moves us within our communities, across our country and around the world. And it drives our economy, spurring investments, creating good jobs and sustaining our standard of living.

A modern energy regulator is critical to ensuring Canadians continue to have access to safe, affordable and reliable energy. That's been the role of the National Energy Board (NEB) since 1959.

Under its almost 60-year-old mandate, the NEB has been responsible for making decisions and recommendations on energy projects, overseeing the safety and environmental performance of these facilities, providing the latest information on energy trends and data, and engaging Canadians.

The result is that the NEB now regulates approximately 73,000 kilometres of international and interprovincial pipelines and 1,400 kilometres of international power lines, as well as Canadian imports and exports of energy.

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**The new Canadian Energy Regulator would help to restore investor confidence, rebuild public trust and advance Indigenous reconciliation – all while ensuring good projects go ahead and our energy resources get to markets responsibly.**

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Our Government is building on this history of achievement by creating a new, world-class federal energy regulator for the 21st Century – one with the required independence and the proper accountability to oversee a strong, safe and sustainable Canadian energy sector in the low-carbon economy.

Located in Calgary, the new Canadian Energy Regulator (CER) would replace the NEB and reflect Canadians' priorities in areas such as greater certainty, more transparency, enhanced public participation and an expanded role for Indigenous peoples.

The Canadian Energy Regulator Act would deliver on all of these fronts by restoring investor confidence, rebuilding trust through open and inclusive new processes for public participation, and advancing Indigenous reconciliation – all while ensuring good projects go ahead and our energy resources get to markets in a timely fashion and environmentally sustainable ways.



## WHY WE ARE DOING IT

As Canadians made clear through our expert panels, extensive public consultations and a pair of parliamentary studies, federal energy regulations must continue to evolve and adapt with the changing times. That includes the NEB, whose structure, role and mandate have remained relatively unchanged since the *National Energy Board Act* was first introduced in 1959.

Canadians have proposed a wide range of potential regulatory reforms, but all agreed that a modern energy regulator is central to integrating Canada's energy, economic and climate goals, as well as renewing Canada's relationship with Indigenous peoples. In other words, good projects would go ahead with timely decisions that promote common values and provide shared benefits.

The new CER would reflect what we heard. For example, its reviews would be clearer, its powers more defined and its timelines for decisions shorter, more predictable and better managed — all of which would result in greater investment certainty.

The new federal energy regulator would also be better equipped to deal with global energy markets that are shifting dramatically, with a legal landscape for Indigenous rights that is evolving, and with new technology that is creating unprecedented opportunities for public consultations and transparency.

In these ways, the new CER's mandate would cover emerging energy developments such as the regulation of offshore renewable energy, advance Indigenous reconciliation and create new opportunities for meaningful public input. As well, its decisions would be guided by science, evidence and traditional Indigenous knowledge while also advancing greater safety, enhancing environmental performance and enforcing regulatory rules that are clearer.

The new CER would support our Government's efforts to diversify Canada's energy markets, expand our energy infrastructure and drive economic growth as we also enhance public participation, advance Indigenous reconciliation and protect the environment for this, and future, generations.

### In the current system:

- Public participation in hearings is restricted to those directly affected.
- Indigenous communities are frustrated by rigid hearing and consultation processes.
- Affected landowners feel inadequately supported by the federal regulator to negotiate fairly with project proponents.
- The NEB's composition does not fully reflect the strength of Canada's diversity or its regional views, including no formal requirement for expertise in areas such as municipal, engineering environmental and Indigenous issues.



## WHAT IT WOULD IMPROVE

By creating a truly modern, world-class energy regulator, Canada would be better positioned to maintain its global competitiveness, attract investment, develop its energy resources responsibly and advance a clean-growth economy.

For example, the new CER would provide predictable timelines and clear expectations for energy projects. This would allow project proponents and their investors to plan better and engage earlier, which would lead to stronger proposals, better results and greater certainty.

At the same time, the CER would conduct regulatory reviews that are more open, accessible, inclusive and transparent. This would give communities a greater voice in their future, including the promotion of a nation-to-nation relationship with Indigenous peoples, Inuit-Crown and government to government, as well as ensuring modern safeguards and stronger protections for the environment, so that Canadians can be confident that energy projects are safely and sustainably regulated for this and future generations.

### What the new Canadian Energy Regulator would mean:

- Modern and effective governance
- Enhanced certainty and timelier decisions
- More inclusive public engagement
- Greater Indigenous participation
- Strengthened safety and environmental protection



# PURPOSE

This handbook outlines key highlights of the Canadian Energy Regulator Act, and next steps, based on five themes:

1. Modern and effective governance
2. Enhanced certainty and timelier decisions
3. More inclusive public engagement
4. Greater Indigenous participation
5. Strengthened safety and environmental protection

# 1. MODERN AND EFFECTIVE GOVERNANCE

Canadians told us that modernizing the NEB must start with updating its structure, role and mandate. This includes clarifying its responsibilities and operations while strengthening its independence and diversity.

The Canadian Energy Regulator Act outlines a clear role for the regulator and establishes mechanisms for the Government to provide the regulator with transparent policy direction.

For example, the proposed legislation separates the regulator's adjudicative function, which demands a high-degree of independence, from its daily operations, where a high-degree of accountability is required. This would be done in three key ways:

1. The new federal regulator would have a Board of Directors to provide oversight, strategic direction and advice on operations.
2. The position of Chief Executive Officer, which would be responsible for day-to-day operations, would be separate from the Chair of the Board. As well, the CEO would not serve on the Board, thereby further separating the roles of the board and the executive.
3. The new regulator would include a group of independent commissioners that would be responsible for timely, inclusive and transparent project reviews and decision-making.

The proposed legislation also includes measures to enhance the diversity and expertise of the new regulator's Board of Directors and commissioners. It includes:

- A new emphasis for expert panels to include expertise in traditional Indigenous knowledge, as well as municipal, engineering, and environmental issues.
- A requirement that at least one member of the Board of Directors and one Commissioner be Indigenous.



## 2. ENHANCED CERTAINTY AND TIMELIER DECISIONS

Canada's energy sector is a major source of employment and investment, and produces significant revenues for governments at all levels. In 2016, for example, the energy sector directly or indirectly employed more than 880,000 Canadians, injected \$75 billion in capital expenditures into the economy and generated an estimated \$20 billion in government revenues.

The industry's success and prosperity demands a more predictable process and timelier decisions — without compromising public consultations, Indigenous reconciliation or environmental stewardship and sustainability.

The new legislation proposes to balance these priorities in a number of key ways:

### Integration

New energy projects requiring an impact assessment would undergo a single, integrated process, carried out jointly by the new Impact Assessment Agency of Canada (IAAC) and the new CER. In other words: "One project, one assessment."

Under this new approach, the IAAC would be responsible for conducting an impact assessment and coordinating consultations with Indigenous peoples in collaboration with the CER. This includes a new "early engagement and planning phase" that would ensure that public participation and Indigenous consultations begin earlier and are more inclusive and meaningful. At the same time, the CER would retain accountability for regulating requirements under the Canadian Energy Regulator Act.

The final report from each project review would feature two sections: an impact assessment and recommendations from the CER or other lifecycle regulator.

### More Efficient and Effective Processes

Other proposed changes include maximum timelines of two years for major projects would be subject to the new Impact Assessment Act process. As well, legislated timelines would be reduced to 300 days, from 450 days, for projects that are not subject to the new Impact Assessment Act.

**In addition, the new federal regulator would have final decision-making authority for minor administrative functions, such as certain certificate and licence variances, transfers and the suspension of certificates or licenses.**

### New Powers

The proposed legislation would also restore the regulator's pre-2012 decision-making authority on whether or not to issue a certificate for major projects, subject to cabinet approval. This change would simultaneously:

- Remove the federal cabinet's ability to overturn a negative decision from the CER.
- Retain Cabinet's right to ask Commissioners to reconsider a decision.



### 3. MORE INCLUSIVE PUBLIC ENGAGEMENT

Canadians are more engaged with and well-informed about energy, economic and environmental issues. They want to participate in regulatory reviews for energy projects and infrastructure, and they want regulators to quickly share new information and developments online.

This proposed legislation recognizes that growing appetite for public involvement by promoting more inclusive engagement.

For designated projects, the new CER's reviews would be closely integrated with the Impact Assessment Agency's work to create one consistent process. This would better ensure that the views of Canadians are taken into account, reviews are more rigorous and decisions demonstrably sound.

To these ends, the CER would use its existing venues to facilitate broader public policy discussions and public engagement outside of the traditional hearing process. These changes would give Canadians more opportunities to debate pressing issues that are beyond the scope of a project's review.

The CER would also be more open and transparent, and would make information publicly available in ways that are easier to understand and more readily accessible. Highlights include:

- The NEB's existing "standing test" would be eliminated to ensure that members of the public have an opportunity to express their views during a regulatory review. The new regulator would also accept comments from the public on a draft list of issues and factors.

- The CER would also engage with the public outside of the hearing process and to a more significant degree — both at the regulator's offices and through an enhanced regional presence.
- The CER's participant funding program would expand to provide additional financing as well as supporting new activities.
- The factors currently considered by the regulator in its "public interest determination" would explicitly reflect consideration of environmental, social, safety, health and socio-economic issues, as well as gender-based impacts and the impacts on Indigenous peoples.
- The CER would regularly publish updated incident reports and create tools on key topics such as the regulator's cost recovery model, standards for compliance and management systems, and environmental protection.





## 4. GREATER INDIGENOUS PARTICIPATION

No relationship is more important to Canada than the one with Indigenous peoples. That is why our Government has dedicated itself to renewing the country's relationship with Indigenous peoples based on recognition of rights, respect, cooperation and partnership.

Canada's energy sector is already advancing many of these same goals by incorporating strong partnerships with Indigenous peoples as part of their foundation for success. Examples range from creating Indigenous Advisory and Monitoring Committees for new pipelines to embracing the use of Indigenous-led assessment processes.

This proposed legislation builds on this good work and raises the bar by:

- Committing to early and ongoing engagement and collaboration.
- Recognizing Indigenous rights upfront and confirming the government's duty to consult, including a requirement to assess impacts on these rights.
- Requiring consideration of traditional Indigenous knowledge.
- Building capacity and enhanced funding for Indigenous participation.
- Creating provisions and arrangements with Indigenous jurisdictions to exercise powers and duties under the Act, such as conducting assessments.
- Aiming to secure free, prior and informed consent.



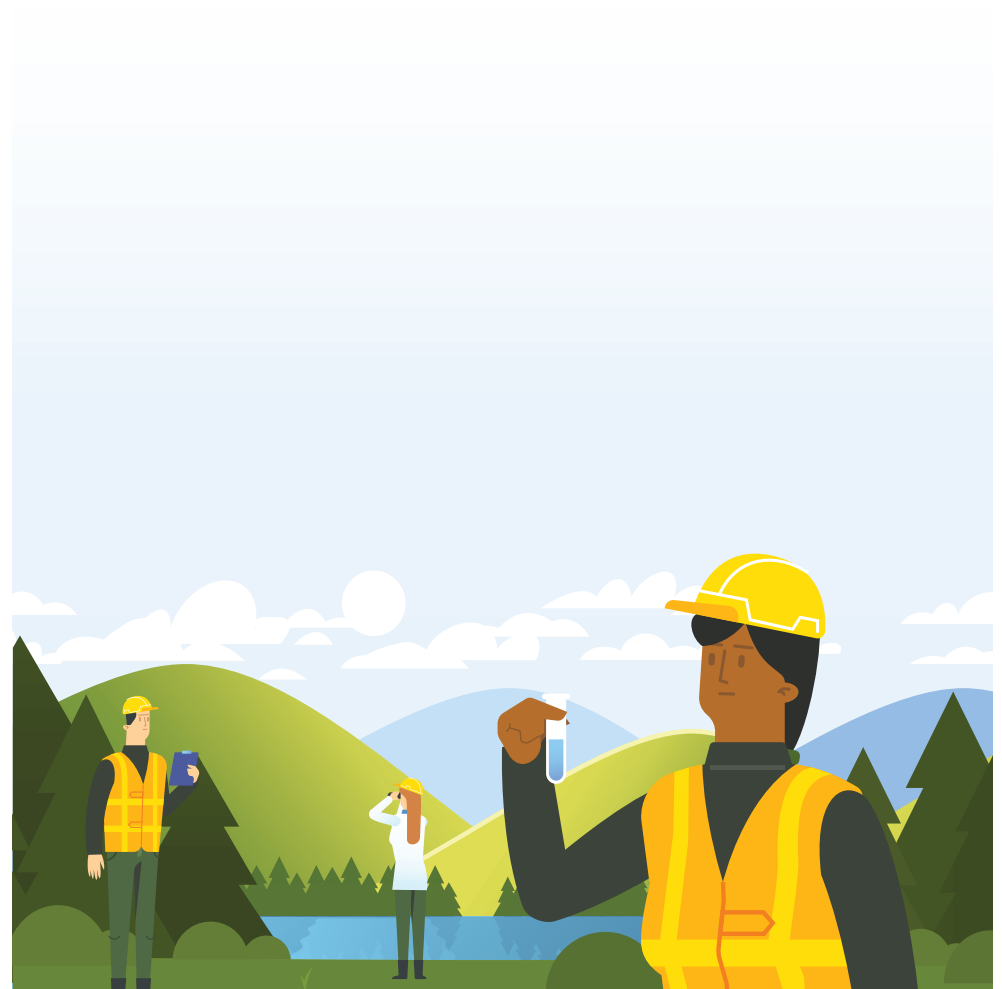
## 5. STRENGTHENED SAFETY AND ENVIRONMENTAL PROTECTION

Canadians are increasingly interested in how energy projects are regulated throughout their lifecycle — from the initial design and construction to the operation and eventual winding down of new resource projects.

Consequently, they want assurances that the federal energy regulator has the tools to protect the environment and ensure a company's regulatory compliance.

The proposed Canadian Energy Regulator Act would do these things by updating the federal energy regulator's legal framework in a number of important ways. These include:

- Updating the powers of federal inspection officers so that they can act quickly and, if necessary, place a stop-work order on any project that is operating unsafely or falling short of prescribed conditions.
- Requiring, in legislation, that companies increase protection of their infrastructure.
- Clarifying the regulator's oversight role to include enforcing standards related to cybersecurity.
- Authorizing the CER to take action to safely cease the operation of pipelines in cases where the owner is in receivership, insolvent, or bankrupt.



# NEXT STEPS

The Government of Canada's proposed legislation, if adopted, would put in place better rules to:

- Protect the environment;
- Regain public trust;
- Strengthen our economy; and
- Support reconciliation with Indigenous peoples.

The new rules proposed today must still be passed by Parliament. Until the new rules come into effect, existing laws and interim principles for project reviews would continue to apply to projects under review. The government would seek input from Canadians on regulations and policy changes required to accompany the legislation.

Visit [Canada.ca/envrionmentalreviews](https://Canada.ca/envrionmentalreviews) for more information.

