ORDER MO-040-2019

IN THE MATTER OF the *Canadian Energy Regulator Act* (Act); and

IN THE MATTER OF the provision of directions required for the safety and security of persons and power lines, and the protection of property and the environment under section 66, paragraph 92(c), subsections 95(2) and 275(1) of the Act.
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BEFORE the Commission of the Canada Energy Regulator (the Commission) on 12 September 2019.

WHEREAS the Act updates the damage prevention provisions that were in the *National Energy Board Act* (NEB Act) for safely conducting activities near power lines as described in subsection 271(1) of the Act (power lines);

AND WHEREAS as a result of the coming into force of the Act it is necessary to maintain the safety requirements for any person planning activities specified in subsections 273(1) and (2) of the Act, so that the activity can be carried out safely;

AND WHEREAS the Commission may by order direct the measures to be taken in relation to activities specified in subsections 273(1) and (2) of the Act;

AND WHEREAS the Commission may specify activities for the purposes of paragraph (a) of the definition of *ground disturbance* in section 2 of the Act, in respect of power lines;

AND WHEREAS the Commission may by order under paragraph 275(1) (b) of the Act give directions establishing the prescribed area for the purpose of subsection 273(1) of the Act;

AND WHEREAS the *Power Line Crossing Regulations* (Regulations) made under the NEB Act remain in force until new regulations come into force and repeal them, to the extent they are not inconsistent with the Act, and section 4 of the Regulations continues to operate for construction of a power line that passes on, over, along, or under a facility under subsections 272(1) and (4) of the Act;

AND WHEREAS section 3 of the Regulations is now inconsistent with the Act as a result of the changes introduced by the Act for the purposes of subsections 273(1) and (2);

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AND WHEREAS the Commission has determined that due to these inconsistencies it is necessary for interim measures to be put into place that provide for the safety and security of persons and power lines, and protection of property and the environment;

AND WHEREAS the Commission has determined that persons planning activities involving power lines must therefore comply with the measures set out in this Order which will be referred to as “Authorizations Order”;

IT IS ORDERED that, pursuant to section 66, paragraph 92(c), and subsections 95(2) and 275(1) of the Act, the following Order be made in relation to Authorizations:
Definitions

1. (1) The following definitions apply in this Order:

(a) “Act” means the *Canadian Energy Regulator Act;*

(b) “authorization” means an authorization referred to in paragraph 275(1)(i) of the Act;

(c) “holder” means the holders of a certificate issued under Part 4 of the Act in respect of a power line;

(d) “power line” means a facility referred to in subsection 271(1) of the Act;

(e) “working day” means any day that is not a Saturday or a holiday, as defined in the federal *Interpretation Act*.

(2) In this Order, if a document that is available in both official languages is incorporated by reference as amended from time to time, any amendment to that document is incorporated only when the amendment is available in both official languages.

Prescribed area

2. (1) For the purposes of subsection 273(1) of the Act, the prescribed area means the strip of land on which a power line is located and that corresponds to the right of way of that line.

(2) The right of way is the land registered or recorded as the right of way in the land registry office or other office where title to land is recorded for the locality in which that land is situated.

(3) If there is no right of way for the power line, the prescribed area is the strip of land 30 meters on each side from the centre of the line.

Ground disturbance – specified activities

3. For the purposes of paragraph (a) of the definition *ground disturbance* in section 2 of the Act, in respect of a power line, the following activities are specified:

(a) cultivation to a depth of less than 45 centimeters below the surface of the ground; or

(b) any other activity to a depth of less than 30 centimeters and that does not result in a reduction of the earth cover over any underground portion of a line.

Locate request

4. If the holder, after having received a locate request from a person that intends to engage in an activity that causes a ground disturbance within a prescribed area, indicates an area that is situated in the vicinity of a power line and that may extend beyond the prescribed area, the ground disturbance is prohibited within that area during the period referred to in subsection 276(1) of the Act.

5. (1) A person that intends to construct a facility across, on, along or under a power line or engage in an activity that would cause a ground disturbance within a prescribed area, must make a locate request at least three working days before the day on which the construction or activity is to start.

(2) The locate request must be made to a one-call centre if there is one within the area where the intended construction or activity takes place and if there is none in the area, to the holder directly.

(3) In the case of an unexpected situation that could endanger life or cause substantial property or environmental damage and that requires immediate action, the period set out in subsection (1) does not apply and the locate request must be made as soon as possible before the construction or activity starts.

(4) A one-call centre is an organization that, for the purposes of protecting the underground infrastructures of its members from damage and ensuring public safety,

(a) receives locate requests from persons within a defined geographical area; and

(b) notifies its members that may be affected by any proposed construction or by any proposed activity that would cause a ground disturbance, if that construction or activity is the subject of a locate request.

6. Any person that intends to construct a facility across, on, along or under a power line, engage in an activity that would cause a ground disturbance within a prescribed area or operate a vehicle or mobile equipment across a power line must, before the construction, activity or operation is to start, inform all persons working on their behalf, including contractors and subcontractors, of their obligations under this Order.

Construction - facility

7. (1) The construction of a facility — in an area other than an offshore area — across, on, along or under a power line, is authorized if the person that intends to construct the facility

(a) obtains written authorization from the holder;

(b) agrees with the holder in writing to a procedure and schedule for the work;

(c) makes a locate request in accordance with section 5; and

(d) meets the following requirements:

(i) complies with the conditions set out in the authorization;

(ii) in respect of overhead crossings, ensures that the construction is designed and executed in accordance with CSA Group standard C22.3 No. 1, *Overhead systems*, as amended from time to time; and

(iii) in respect of underground crossings, ensures that the construction is designed and executed in accordance with CSA Group standard C22.3 No. 7, *Underground systems*, as amended from time to time.

(2) If the authorization is suspended, the construction must cease for the duration of the suspension.

(3) Any person that is undertaking the construction of a facility must ensure that the construction is carried out in accordance with the technical details that are set out in the person's request for authorization and that have been accepted by the holder, as well as with the conditions set out in the holder's authorization.

Ground disturbance activity

8. (1) Any activity — in an area other than an offshore area — that would cause a ground disturbance within the prescribed area is authorized if the person that intends to engage in the activity

(a) obtains written authorization from the holder;

(b) agrees with the holder in writing to a procedure and schedule for the work;

(c) makes a locate request in accordance with section 5; and

(d) complies with the conditions set out in the authorization.

(2) If the authorization is suspended, the activity must cease for the duration of the suspension.

(3) Any person that is engaged in an activity that causes a ground disturbance within the prescribed area must

(a) ensure that the activity is carried out in accordance with the conditions set out in the holder's authorization;

(b) ensure that there is no additional earth or other material within the prescribed area that could reduce the ground to conductor clearance of the overhead line;

(c) immediately notify the holder of any contact with any underground portion of the holder's power line; and

(d) notify the holder at least 24 hours before backfilling over any underground portion of the holder's power line that is exposed, unless the holder and the person that is engaged in the activity agree otherwise.

Vehicles and mobile equipment

9. The operation of a vehicle or mobile equipment across a power line is authorized if the person that intends to operate the vehicle or mobile equipment obtains authorization from the holder.

Continuing Authorizations

10. In sections 11 to 13, *coming into force* means the day on which the *Canadian Energy Regulator Act* comes into force.

11. Any leave granted by a holder before the coming into force day, under subsection 58.31(2) of the *National Energy Board Act*, as it read immediately before that date, to operate a vehicle or mobile equipment across a power line, remains in force until the expiry date set out in the leave.

12. Any excavation or the construction of a facility that was started before the coming-into-force day and for which leave of the National Energy Board was not

necessary under paragraph 58.33(c) of the *National Energy Board Act*, as it read immediately before that day, may be continued after that day if it is carried out in conformity with the applicable conditions set out in section 3 of the *Power Line Crossing Regulations*, as it read immediately before that day.

13. Any construction of a power line that passes on, over, along or under a facility for which leave was granted before the coming-into force day, under subsections 58.28(1) and (4) of the *National Energy Board Act*, as it read immediately before that date, continues to be authorized if the construction is carried out in conformity with the applicable circumstances set out in section 4 of the *Power Line Crossing Regulations*, as it read immediately before that day.

THE COMMISSION OF THE CANADA ENERGY REGULATOR

Original signed by

L. George
Secretary of the Commission