

2018 12 07

Power Line Damage Prevention Project Team
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BY E-MAIL

Attention: Ms. Chantal Briand, Regulatory Drafting Specialist
Ms. Rebecca Vanderspiegel, Regulatory Development Specialist

Dear Ms. Briand and Ms. Vanderspiegel,

Re: Manitoba Hydro Input on Proposed Damage Prevention Framework for Federally Regulated Power Lines

Manitoba Hydro ("MH") is appreciative of the opportunity to provide input into the development of regulations for the proposed *Canadian Energy Regulator Act* (CER Act); and specifically, feedback on the *Discussion Paper: Damage Prevention Framework for Federally Regulated Power Lines*. MH would also appreciate the opportunity to provide additional feedback as the development of regulations progresses.

Manitoba Hydro is a provincial Crown Corporation and a vertically integrated utility that has substantial experience with the ownership and reliable operation of electric generation and transmission facilities in the province of Manitoba. MH currently owns and operates four international power lines ("IPLs") and is undergoing regulatory approval for a fifth IPL. MH therefore considers itself to be an important stakeholder in the development of regulations pursuant to the CER Act.

In general, MH believes that: (i) the scope of application of the proposed updated Damage Prevention Framework should be clarified; (ii) further specificity should be added to several provisions; and (iii) some of the requirements for the use of land in the vicinity of an IPL are too restrictive and will introduce negative consequences that are unnecessary to meet the goals of the legislation.

As the NEB moves to further clarify and/or modify its proposed regulations, MH recommends another round of industry input in order to guard against unintended consequences of the proposed regulations. To this end, MH suggests that an industry task group with representation from the electricity sector be commissioned to review and provide an additional submission to Natural Resources Canada ("NRCan") and the National

Energy Board (“NEB”) regarding these regulations. If formed, MH recommends that this industry task group be afforded the opportunity to provide feedback in advance of the publication of the proposed regulations in the Canada Gazette for comment.

PRELIMINARY RECOMMENDATION

As a preliminary point to the questions posed in the Discussion Paper, MH recommends that the scope of application of the regulations be clarified in the text of the regulations. It is unclear from page 1 of the Discussion Paper which states: “Power lines that cross international borders are federally regulated....” whether the proposed regulations are intended to apply to all international power lines. In MH's view, such a broad scope would be inconsistent with the framework of the CER Act. The restrictions in sections 272 and 273 of the Act related to construction, ground disturbances and the use of vehicles/motorized equipment in the vicinity of an IPL have a confined scope as per section 271 of the Act. They do not apply to IPLs that have a designated Provincial Regulatory Agency, which triggers the application of provincial law. In order to be consistent with the scope of these provisions, the regulations should have a similar scope. This would also align with the ability of an applicant for an IPL under the CER Act to choose the application of provincial law to an IPL.

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?

As explained in more detail below, MH is unable to determine whether the prescribed area is adequate because of the lack of specificity in the proposed wording.

- The prescribed area itself requires further specificity as it is unclear from which point on the IPL the 30 meters is to be measured. Is it measured from the centre of the line, or either side of line? MH recommends utilizing the edges of rights of way (“ROWS”) as a measuring point for the prescribed area, as ROWs are established with these factors in mind.
- 30 metres may be sufficient for some lines and too little for others based on line swing, electric field strength and voltage of the line. Moreover, a distance of 30 meters may be ineffective for emerging transmission technologies/capacities.

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

MH believes that while the proposed regulations would maintain safety and avoid damage to federally regulated power lines, the requirements are too restrictive. The proposed

requirements would have negative consequences related to impacts to the public regarding continued safe use of the ROW, administrative burden to the owner of the line and impacts to Crown land use by Indigenous and Metis peoples. The proposed regulations may also present barriers to compliance with reliability standards governing vegetation management.

Specific concerns and recommendations

- MH believes that different safety measures are warranted for underground power lines versus overhead power lines and that this should be reflected in the regulations. For instance, more stringent precautions for disturbing the ground make sense for underground transmission lines and pipelines. As such, MH's recommendations below are specific to overhead power lines.
- MH considers the proposed definition of "ground disturbance" to be too broad as it will capture many activities that are currently carried out in the vicinity of existing lines that do not pose a safety or damage risk to overhead lines. Routine agricultural practices, such as plowing by farmers on lands over which they have granted easements to the holder of the line, would require daily written authorizations with prescribed schedules and procedures during the farming season unless some form of blanket authorization is permitted. Even if blanket authorizations were permitted, MH has concerns regarding the administrative burden associated with negotiating new or revised easement agreements for a large number of parcels of land over which its IPLs are located, which in turn may lead to operational paralysis.
- MH therefore recommends that "light" ground disturbance be permitted by the regulations. MH believes that the definition of "ground disturbance" for pipelines that is proposed in Appendix A of the Discussion Paper should be adopted for overhead IPLs.
- In addition to revising the definition of "ground disturbance", MH recommends that certain exclusions be built into the regulation. MH has concerns that the proposed regulations would restrict traditional land use activities practiced by Indigenous and Metis peoples on Provincial Crown lands. These lands are subject to the administration of the Provincial Crown and in MH's view should be excluded from the scope of the regulations.
- Similarly, MH is concerned that some of the proposed requirements may inhibit a facility owner's ability to comply with certain reliability standards requirements related to vegetation management. Since NERC requires compliance with such standards for federally regulated lines, MH recommends an exclusion for activities that are reasonably required for an owner to meet such standards.

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

- The requester should be required to provide all of the information considered necessary by the holder to properly assess the request, such as drawings, scope of work and construction methodology and techniques.
- Clear criteria for accepting or denying requests for authorizations should also be established.
- If timelines are established for a holder to respond to a request for authorization, holders need to be given sufficient time to provide a response. The time required to respond may vary with the nature and complexity of the request as well as with the resources of the holder. Accordingly, it may be necessary to incorporate flexibility into response times.

MH also notes that as the proposed regulation, if not modified in scope, would significantly increase current administrative processes, sufficient transition time should be provided to IPL owners to comply with the new regulations.

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?

Given the wording of the proposed regulations, the volume of locate requests will be directly tied to the definition of "ground disturbance". As noted above, the administrative burden of the regulations as currently written would be significant, as a locate authorization would be required each time that routine farming operations are carried out near IPLs. This is impractical from an administrative perspective and would severely restrict the use of land owned by farmers that is under easement by holders. These consequences should be weighed against the risk to safety or damage to the IPL.

In MH's view, locate requests should not be required for ground disturbances carried out by the holder. It is not clear from the proposed regulations whether internal authorizations must be adhered to by the various internal departments of a facility owner.

MH also has some concerns about the nature of the "authorization" from a holder in the event that other infrastructure is located in the vicinity of the IPL. Third party authorizations may also be necessary to safely proceed with the activity.

MH recommends that when making locate requests, requesters be required to have intersecting ROWs or infrastructure (being constructed by requesters) validated by an accredited land surveyor.

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

It is unclear to MH whether the intent is that this One-Call Centre for power lines subject to the CER Act would be the same centre that applies to pipelines (clickbeforeyoudig.com) and whether the same process that applies to pipelines (recently updated in 2016) would apply to power lines.

MH generally finds the requirement for a holder to be a member of a One-Call Centre to be a reasonable one with respect to power lines provided that the intention of this requirement is not for new One-Call Centres to have to be established for power lines that fall under the CER Act, where an existing One-Call Centre already exists. For example, Manitoba Hydro is a member of the One-Call Centre clickbeforeyoudigmb.com and does not expect to have to join a new One-Call Centre.

That being said, MH would appreciate more clarity on the “One-Call Centre” intended for power lines, including a list of existing One-Call Centres and contact information if this is different from the information posted on the NEB website with respect to One-Call Centres for pipelines.

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

MH does not have other comments on the requirements related to construction of IPLs near facilities, but does have the following comments on the proposed requirements for the operation of vehicles/equipment and crossings in the vicinity of IPLs that are included in the same portion of the Discussion Paper.

- 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 would be considered “across” the overhead power line and therefore within the scope of the regulations. The section of the regulations on this matter should clarify this issue by specifying a distance from the line or a defined ROW within which vehicle/equipment activities are regulated.
- Crossing permits for vehicles should only be required when the crossing vehicles are a high load or differ from standard land use. CSA standards require power lines to have clearances sufficient for the particular land use. Agricultural land has high clearance requirements due to sprayers. MH notes that if a power line is

designed in accordance with CSA standards, vehicle crossings should not be a safety concern.

- Restrictions on the operation of a vehicle or equipment should not apply to the holder.
- For efficiency, all exclusions to these requirements should be made clear in the regulations (ie. IPLs located on provincial Crown land where operation of vehicles is already authorized by provincial legislation etc.).

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?

MH recommends that post-construction reports be required of authorized requesters to confirm the fulfillment of obligations under the regulations and the conditions of authorization.

MH also recommends that “the location of the underground continuous counterpoise and any underground fibre optic cable” be added to the list of requirements for a damage prevention program.

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?

NRCan and the NEB have indicated to MH that there will be more detail in the regulations than the drafts provided. Therefore, 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.

MH recommends at a minimum, a 12-month transition period, and this is assuming that an industry task group is convened to provide input on the next version of regulations.

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

- If pipelines cross underneath power lines or run parallel, corrosion mitigation should be installed on the pipelines.
- For other facilities constructed near IPLs, the effects of ash, salt etc. that can be exhausted by mine processing and liquid distilling facilities that can accumulate on conductors and insulators should be considered. Blasting activities from

quarrying and mining can have flying debris that impact IPLs and should also be considered.

- The term “along” in sections 272(1) & (2), 273(1) and 275(1) of the CER Act should be defined in the regulations, 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 proposed definition of “holder” should exclude reference to a permit, as permits are not issued for federally regulated power lines.

Concluding Remarks

MH thanks the NEB and NRCan for the opportunity to comment on the proposed Damage Prevention Framework regulations for the CER Act. MH would be pleased to answer any questions about its submission. Please contact Grainne Grande, Legal Counsel, at the contact particulars below.

MH looks forward to the opportunity for further engagement with the NEB and NRCan on the proposed regulations.

Yours truly,

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