



National Energy
Board

Office national
de l'énergie

THE Public Hearing PROCESS



YOUR GUIDE TO UNDERSTANDING NEB HEARINGS

Canada

© Her Majesty the Queen in Right of Canada 2011
as represented by the National Energy Board

Cat. No. NE23-142/2012E-PDF
ISBN 978-1-100-20201-3

This report is published separately in both official languages
and is available upon request in multiple formats.

Copies are available on request from:

National Energy Board
Publications Office
444 Seventh Avenue S.W.
Calgary, Alberta T2P 0X8
403-299-3562
1-800-899-1265

For pick-up at the NEB office:

Library
Ground Floor
Internet: www.neb-one.gc.ca

Printed in Canada

National Energy Board Hearings 1

First Steps in the Hearing Process 5

Participating in a Public Hearing 9

In the Hearing Room.17

After the Hearing25

National Energy Board Hearings

Energy plays a major role in the lives of Canadians. We use energy on a daily basis to commute to work, cook our food and heat our homes. Many Canadians also work in the energy industry in various roles from pipeline engineers and drill operators, to environmental specialists and market analysts.

Companies need to construct and operate facilities to produce and transport energy. Companies also need permission before they can build or expand a new facility or transportation system, such as a pipeline or power line. In some cases, that permission must come from the National Energy Board (NEB).

Before the National Energy Board makes a decision on an application for a major project, a hearing is usually held. This allows the company proposing the project, and any other interested people or groups, a chance to provide information on the project and to provide input in support of or against a project. The decision on whether or not to approve a project on the basis of public interest is the discretion of the NEB.

“*The NEB is active and effective in Canada’s pursuit of a sustainable energy future.*”

Who is the National Energy Board?

The National Energy Board (NEB or the Board) is an independent federal regulator established in 1959 to promote safety and security, environmental protection and economic efficiency in the Canadian public interest within the mandate set by Parliament for the regulation of pipelines, energy development and trade. The Board reports to Parliament through the Minister of Natural Resources.

The NEB is established under the *National Energy Board Act*, which sets out the mandate for the NEB. The Act establishes the NEB’s authority in energy projects as well as determining the regulatory boundaries for making decisions.

Why does the NEB hold hearings?

A hearing gives any interested person an opportunity to express their point of view, and possibly ask or answer questions. It also provides the NEB with the information it may need to make a fair and objective decision.

What kinds of applications require hearings?

There are many different kinds of applications that require an NEB decision. Some of these applications may require a public hearing. These include:

- applications for the construction and operation of pipelines that are either international or interprovincial, and international power lines;
- applications to set the tolls and tariffs of pipeline companies under the Board's jurisdiction;
- applications to abandon a pipeline;
- export applications for natural gas, oil or electricity or import applications for natural gas; and
- landowner oppositions to the detailed route of an approved pipeline.

Are there different types of NEB hearings?

Yes. Hearings at the NEB can be conducted solely in writing or through a combination of written and oral submissions.

A written hearing means the hearing is conducted entirely in writing. The majority of these documents are available for the public to view on the NEB website (www.neb-one.gc.ca). When the NEB announces a hearing, it will also include information on how the hearing will be conducted and how people can participate. Further information on participating can be found later in this booklet.

An oral hearing is what most people think of when they think of a hearing. However, even this hearing begins with a written process. Participants file their written evidence and then have the opportunity to ask questions in writing of each other. All of this information is usually available on the NEB website. This is followed by the oral portion of the hearing in which participants ask oral questions of witnesses and present their final argument or the summary of their position based on the evidence.

If an application to construct a facility is approved, the company has permission to construct, operate and maintain the pipeline or power line. If it is an import or export licence hearing, the company may be granted a licence. Tolls hearings may involve making decisions on the amount of money a pipeline company is allowed to charge for the transportation of oil or gas or access to the pipeline.

If a company's application for a pipeline or power line project is approved, the company is usually required to file documents called Plans, Profiles and Books of Reference with the NEB. These documents show precise locations of the pipeline or power line, the type of land rights the company needs, and the descriptions of the lands that would be affected.

If those landowners whose lands may be affected by the proposed project have specific concerns with the route or the methods or timing of construction, they may request a detailed route hearing be held. If there are no written objections to the detailed route, the NEB may approve the route and plans as filed. The NEB may also place conditions that the company must follow on the approval.

If you would like to know more information about filing an objection to a detailed route, please contact the NEB at 403-292-4800 or toll free at 1-800-899-1265.

What type of information is considered during a hearing?

At a hearing, the NEB considers all information that is relevant to the question of whether or not the application should be approved. Some of the topics that are usually discussed in hearings on applications for a pipeline or power line project include:

- the design and safety of the project;
- environmental matters;
- socio-economic and land matters;
- impact of the project on potentially affected Aboriginal interests;
- impact of the project on landowners and other potentially affected stakeholders;
- financial responsibility of the applicant;
- economic feasibility of the project; and
- any public interest that may be affected.

Are compensation matters considered during a hearing?

The NEB does not have the authority to determine compensation amounts. Compensation claims for land use or damage resulting from construction are handled by the federal Minister of Natural Resources.

If you participate in a detailed route hearing, you may claim your costs of participating from the company. Receipts must show the amount of the actual costs, to whom they are owed and the reason for the costs. For example, legal fees or costs for attending the hearing could be acceptable costs. If you and the company cannot settle on the amount you wish to claim, the NEB can determine a reasonable amount.

First Steps in the Hearing Process

The hearing process plays a very important role in the National Energy Board's regulatory practice. It is during the hearing process that all the information is gathered and people are given the opportunity to voice their opinion on the proposed project. The process is guided by the *National Energy Board Rules of Practices and Procedures* available on the website under "Acts and Regulations".

BASIC HEARING STEPS:

- 1. An application is filed by the company with the NEB.**
- 2. The public is notified about the application through the Hearing Order and public hearing notices.**
- 3. Intervenors register to participate in the hearing.**
- 4. The company and intervenors in the hearing file written evidence.**
- 5. Information requests are submitted and answered based on the evidence that is filed.**
- 6. People who don't wish to fully participate in the hearing may submit a letter of comment explaining their position on the project or make an oral statement at the hearing.**
- 7. If there is an oral hearing, intervenors gather on a specific date to ask oral questions of witnesses and to provide final argument.**
- 8. The panel makes a decision on the application and releases the decision to the public.**

What is a Hearing Order?

Once the NEB decides that an application requires a hearing, the NEB issues a document called a Hearing Order. A Hearing Order gives a brief description of the proposed project, the list of issues that will be considered, as well as details on the steps in the hearing process and the schedule for the various steps, including the date, location and time of the hearing if it is known.

The Hearing Order also includes information on how people who want to participate in the hearing may get involved. Included in this are deadlines for the various steps in the process such as applying to

participate, submitting evidence or letters of comment and asking questions. Deadlines are set to be fair to everyone involved in the process and should be respected. Please see the section entitled “Participating in a Public Hearing” for more information.

The NEB sends out a news release when a Hearing Order is issued. The Hearing Order is also posted on the NEB’s website. Applicants must also publish notice of the hearing in newspapers that serve the area around the proposed project.

If there is an oral component to the process, what takes place before that date arrives?

Many different events or actions take place before the start of an oral hearing. Some of the major actions or events include:

List of Issues

The NEB will distribute a preliminary list of issues for a particular application. These issues structure how the NEB will hear the application. Participants in the hearing may suggest changes to the list of issues which may be made if the NEB panel believes the matter is necessary to their decision. Often, these suggestions are already included within an issue that is on the list.

If you are planning to participate in the hearing, keep the list of issues in mind when you prepare your evidence, questions, letter of comment or oral statement. You should try to focus your materials around what is on the list.

The list of issues is also important because it keeps everyone involved focused on the same set of topics. Issues that do not fall under the NEB’s jurisdiction will not be included in this list.

Public Information Sessions

Sometimes NEB staff members will go out to communities that may be impacted by the proposed project to conduct public information sessions. These informal meetings are held before an oral hearing and they provide people with information on how to participate during the hearing as well as information on the hearing process. Information sessions are not the time for people to voice their opinion on a project; rather it is a chance to get information on the NEB hearing process.

Dates and locations for these information sessions may be announced through news releases, newspaper and possibly radio ads, community posters or on the NEB's website.

Information Requests

If you have registered to formally participate in the hearing as an intervenor, you can request additional information about the application from the company or from others who have filed written evidence. The NEB can also issue information requests to anyone involved in the hearing. These written requests and responses are posted on the NEB's website where possible.

For specific information on how to submit an information request, please consult the *National Energy Board Rules of Practices and Procedures* available on the website under "Acts and Regulations" or contact the NEB for further details.

Technical or Procedural Conferences

Conferences can be used to identify, clarify, narrow or resolve issues during a hearing process. They may also be used to explain NEB processes. Sometimes technical conferences are held to help coordinate the participation of other federal authorities involved in the NEB process.

A technical conference may be arranged when the applicant, the NEB or interested persons identify a situation where it might be beneficial to consider holding a conference to resolve any issues more quickly.

How can I access written information about an application?

The majority of the written information, including a complete copy of the application, any letters of comment, or correspondence between the NEB, the applicant, and other parties can be found on the NEB's website at www.neb-one.gc.ca. Copies of any information that cannot be posted on the NEB's website may be requested from the NEB Library.

Once on the website, there is a link called "Regulatory Documents." An index will then direct you to the information you want to find. The index is divided based on the type of application (facilities, tolls, advisory, and export/import) and also by commodity. The majority of the information that is submitted to the NEB is available for viewing in this area.

If you know the Hearing Order number, you may also use this to search for the information. The NEB Library also has a copy of the Hearing Order for viewing and copies are also often sent to local libraries in the areas where the proposed project may take place. If you are unable to find the information you are looking for, please contact the NEB and someone will assist you.

Why are other government departments and agencies involved in the hearing?

Other federal and provincial government agencies may become involved in the hearing process if they have an interest in the outcome. This is particularly true for those agencies that look at environmental issues. These agencies may participate as intervenors, government participants or submit letters of comment.

Participating in a Public Hearing

How can I participate in a hearing?

Depending on the process chosen by the NEB for a project's assessment, there are typically three ways that individuals or groups may participate in a hearing:

- write a letter of comment;
- make an oral statement; or
- become an intervenor.

The Board will set out the available options for participation in the Hearing Order.

Letters of Comment

If you want to share your views on a project but not formally participate in a hearing, you can do so by submitting a letter of comment to the Secretary of the NEB. You must also send a copy of this letter to the applicant. A letter of comment should include your view on the project and also include information to support that view. Letters of comment will be accepted up to the deadline noted in the Hearing Order.

Letters of comment will be taken into consideration during the hearing process. They will not be considered sworn evidence and are not subject to questioning. As a result, letters of comment may not be given the same weight as sworn evidence in a hearing, although the weight of the letters depends on a number of factors, including the content.

All letters of comment become public documents once they have been submitted. They will be available on the NEB website and copies are sent to all parties participating in the hearing.

Oral Statements

Another potential option for participation is to make an oral statement at the hearing. People making oral statements are not considered to be intervenors. To make an oral statement you must register with the NEB. The registration process is very simple - state your interest in the project and the reason you wish to make an oral statement. The form is available on the NEB website or you can call 1-800-899-1265 to have a copy sent to you.

Intervenor

An intervenor is someone who has an interest in a proposed project and would like to formally participate in the hearing. Being an intervenor requires a commitment to the hearing process and a commitment of your time. There may be costs associated with being an intervenor, such as preparing your evidence, making copies and sending documents to other parties.

The NEB has a Participant Funding Program to support public participation in oral facility hearings that are held under the *National Energy Board Act*. Eligible recipients include individuals, Aboriginal groups, landowners, incorporated non-industry not-for-profit organizations, or other interest groups who seek to intervene in the public review process for projects in which they have a meaningful interest.

All approved recipients must register for intervenor status in the oral public hearing and sign a Standard Contribution Agreement before funding will be released.

Intervenors may present evidence, question other witnesses and give final arguments during the written and oral portions of the hearing. Intervenors can also be questioned on any evidence they present.

Intervenors can be:

- landowners;
- area residents;
- government agencies;
- Aboriginals;
- companies; or
- any other individual or group.

To become an intervenor, you must apply to the NEB within the time frame set in the Hearing Order. The NEB will decide if your interest in the proposed project is enough for your participation in the hearing as an intervenor. If there are a number of people with similar interests in the project, you may want to consider applying as a group and having only one or two representatives speaking for that group.

To submit a letter of comment, apply to make an oral statement or become an intervenor, please use the NEB's application form. This form is on our website: www.neb-one.gc.ca. Follow the links from the "Regulatory Documents - Submit Documents" link on the home page. You can print the application and send it in.

What information should I submit when I apply to become an intervenor?

When you apply to the NEB to become an intervenor you should clearly explain why you would like to participate in the hearing by listing specific issues you want to address at the hearing. Your application to the NEB for intervenor status should include:

- a statement of your intention to appear or not appear in person at the hearing;
- name, address, telephone/fax number and e-mail address for you or the person you have authorized to act on your behalf;
- a brief description of your interest in the application;
- a statement on the issues you plan on raising during the hearing, or if you're not attending, the reason an intervention is required;
- if you plan on attending the hearing, the language you will be participating in; and
- the Hearing Order number and NEB file number of the project you are referring to (these can be found on the Hearing Order).

What is my role as an intervenor during the hearing process?

As an intervenor you have the right to receive all of the documents concerning the project in the written and oral portions of the hearing process. These documents will be sent directly to you. During the hearing process, you will have the opportunity to present written evidence, question others on their written evidence, cross-examine other witnesses at the oral portion of the hearing, and give final argument. You may also be questioned on any evidence that you present.

How much work is involved in participating in a hearing?

The amount of preparation and work commitment depends on the option of participation you choose. Writing a letter of comment is the least demanding as you do not need to participate or appear at the actual hearing to give your input on the project. Making an oral statement requires more involvement because you must first register, and then prepare and deliver your oral statement.

Becoming an intervenor can be quite time consuming and require much more effort to properly prepare and participate. There is a lot of work that must be done before reaching the oral hearing phase of the process. This includes reading many written documents submitted by others and, if you wish, submitting questions on those documents. You may also be preparing, filing and serving your own written evidence and responding to any questions asked to you.

While attendance for the entire hearing may not be possible, try to attend for the opening of the hearing so you can register your appearance. This means that you will tell the Board you intend to participate. Also, you should try to attend on the days when the issues you are most interested in are being presented. If you cannot attend every day, it is important to keep track of the progress of the hearing, particularly if you intend to ask questions of witnesses, otherwise you may miss your opportunity to do so.

I cannot attend the oral hearing in person but I still want to know what is going on. How can I do that?

If you cannot attend the hearing in person, you can listen to the live hearing broadcast. This is available through the NEB website (www.neb-one.gc.ca) under the heading “Hearings and Information Sessions.” Select the name of the application and follow the links.

Will I be given any compensation for my costs if I am an intervenor?

The NEB's Participant Funding Program provides financial assistance to support the timely and meaningful participation of interested parties in the NEB's oral hearing process for facility applications.

To find out more about eligibility criteria, and whether or not funding is available for the hearing you wish to intervene in, visit the NEB website (www.neb-one.gc.ca) and click on Public Participation.

Do I need a lawyer to participate in an oral hearing?

You do not need to hire a lawyer to participate in an NEB hearing or any other NEB process. Some people may be more comfortable having another person speak on their behalf. A request may be made to the Board for somebody to be designated to speak on your behalf—but that person does not have to be a lawyer.

NEB hearings are conducted in some respects like a civil court and there may be formalities or procedures that are unfamiliar to you. You may want to think about your own experience in participating in hearings or similar court-like procedures before you decide whether or not to seek assistance from a lawyer. However, the NEB recognizes that not everyone is familiar with its procedures and staff will provide information on procedural matters where possible.

How should I prepare for the oral hearing?

Participating in an oral hearing may at first seem daunting, but being prepared will ease some of the stress.

1. Review information you receive from the applicant and other intervenors in advance of the hearing.
2. Prepare your questions and argument or your oral statement so they are organized and as complete as possible
3. If you are an intervenor, bring a copy of all the evidence that you have previously filed with the Board with you, and review these before you participate.
4. Be prepared to answer questions about your evidence or your oral statement.
5. Prepare in advance any questions you may want to ask the applicant or other intervenors during the hearing, but do not repeat questions that have already been asked.

NEB oral hearings are similar to other court proceedings. The way information is presented and how questions are asked is essentially based on what happens in a court of law.

Evidence

Evidence refers to reports, statements, photographs and other material or information that supports the view that you are presenting. It must be filed with all participants and the NEB before the oral hearing by the deadlines set out in the Hearing Order. Evidence may be filed electronically. Any evidence that you provide must be adopted under oath, usually during the oral phase of the hearing. This means that you will be sworn in, and then you will confirm that the evidence was prepared by you or under your direction or control, and it is accurate to the best of your knowledge and belief.

Other participants in the oral portion of the hearing who take an opposing position to you may question you on the evidence you present. Please be prepared to answer questions on your evidence.

Witnesses

Witnesses are those people who can best answer questions on the evidence provided. In some cases they may be professional experts or lay persons who can answer questions on the evidence filed.

The company will normally have several witnesses to answer questions related to the engineering, geology, environmental or economic issues in an application. Intervenors may present witnesses to answer questions on their evidence. In some cases the intervenor may be its own witness.

Your witnesses may also assist you in preparing a case by providing advice on the issues. It is up to you to decide whether or not having an expert witness will help you make your case.

Cross-examination

Cross-examination is when participants in the hearing ask the witnesses or other participants questions on the evidence that the participant has filed.

If you are an intervenor, you have the right to cross-examine the applicant's witnesses and other participants who take an opposing position to you during the hearing, but you must ask your questions at the time those witnesses or participants are appearing at the hearing to be cross-examined. Once those witnesses or participants have been excused, your chance to ask them questions has passed.

When planning your questions for a cross-examination, make sure your questions are related to that person's area of expertise and do not repeat questions that have already been asked.

Motions

Motions are formal requests that require a decision by the NEB panel members. An example of a motion would be asking for a better response from another person to a question you asked, a request for a change to procedure, or a request for an extension or an adjournment.

To put forward a motion to the panel, written copies of the motion along with any supporting documents must be provided to the panel, applicant and any intervenors. The panel will determine a procedure for handling these requests and will usually deal with the matter in writing if the motion is made before the oral portion of the hearing. Some motions are made orally during a hearing and the panel may make a decision immediately or within a short time frame. Other motions are complex and may require a few weeks to decide.

Objections

An objection is when someone disagrees with the way another person is cross-examining a witness. For example, an objection may take place over the relevance or appropriateness of questions asked during cross-examination. Objections can also be raised when someone tries to introduce new evidence during a time when they are not allowed. The panel will hear from the parties involved and decide whether to allow the objection.

Final argument

After all participants in a hearing process have had a chance to present evidence and cross-examine witnesses, they are given the opportunity to make a final argument. This involves a summary of a person's opinion on a project using the evidence on the record that supports his or her position. You cannot present any new evidence when you make your final argument. The NEB panel members will determine whether final arguments will be made orally or in writing.

In the Hearing Room

While hearings can at first seem formal and even intimidating, the NEB prides itself on conducting thorough and orderly hearings that meet the needs of those participating. It expects all participants to behave in a courteous manner toward the NEB panel and all participants.

NEB hearings are structured and have an agenda that must be followed, but there is also some flexibility to make things easier for participants. This may include setting up hearing times in the evening so people can participate after work, offering information sessions before the start of a hearing to help people understand the process, and adopting a more casual seating arrangement and dress to fit in with the community.

Hearings can be overwhelming, but with the proper preparation and organization, your participation can be effective.

Who makes up the hearing panel?

Decisions in NEB hearings are usually made by a panel of three people. These people are NEB Board members who have been assigned to make a decision on behalf of the full Board.

Board members are appointed by the Governor in Council (GIC); that is, the Governor General acting on advice from the Federal Cabinet. Board members are selected from the private and public sector and have knowledge or expertise in a variety of areas, such as economics, engineering, environment, finance, law, public participation, safety and science.

Panel members act as the judges on the application. They must read and listen to all the evidence on the project, and may ask questions of the applicant and other participants. They also make a final decision on whether or not to approve the application.

Where are oral hearings held?

NEB hearings usually take place in the community impacted by the proposed project, and may take place in more than one community if necessary. By holding them in the community, it is easier for people to participate in the hearing process. The decision on where to hold a hearing is made by the panel. Sometimes, a hearing room might be set up in a hotel conference room or in a community hall. Many NEB hearings are also held in the NEB Hearing Room in Calgary.

Aside from the panel and participants, what are the roles of the other people at the hearing?

NEB Staff

Regulatory Officers are responsible for all the physical arrangements for the hearing including booking the room, arranging for the set up and coordinating any electronic needs. They also record all exhibits, give the oaths to witnesses and schedule the translation. Overall, Regulatory Officers are essential to ensuring the hearing process runs smoothly.

Other NEB staff are there to advise the panel on technical matters such as issues relating to engineering, geology, the environment, finance or socio-economic matters. NEB staff are also there to assist participants with any questions they may have about the process or timing of events

If you have any questions about the hearing process, do not hesitate to ask any NEB staff member for assistance.

Lawyers

The company, the NEB and some intervenors are typically represented by lawyers.

NEB lawyers serve two purposes. The first is to advise the panel on legal matters, including how the hearing should be conducted. Their second role is to question the applicant's and intervenors' witnesses in order to gather the information needed for the panel to make a decision.

NEB lawyers are not there to challenge witnesses or support or oppose the applicant or the intervenors. They are there to assist anyone who may not have their own legal representation by providing explanations on process-related questions. NEB lawyers cannot work on behalf of participants in terms of conducting cross-examinations or presenting evidence on their behalf.

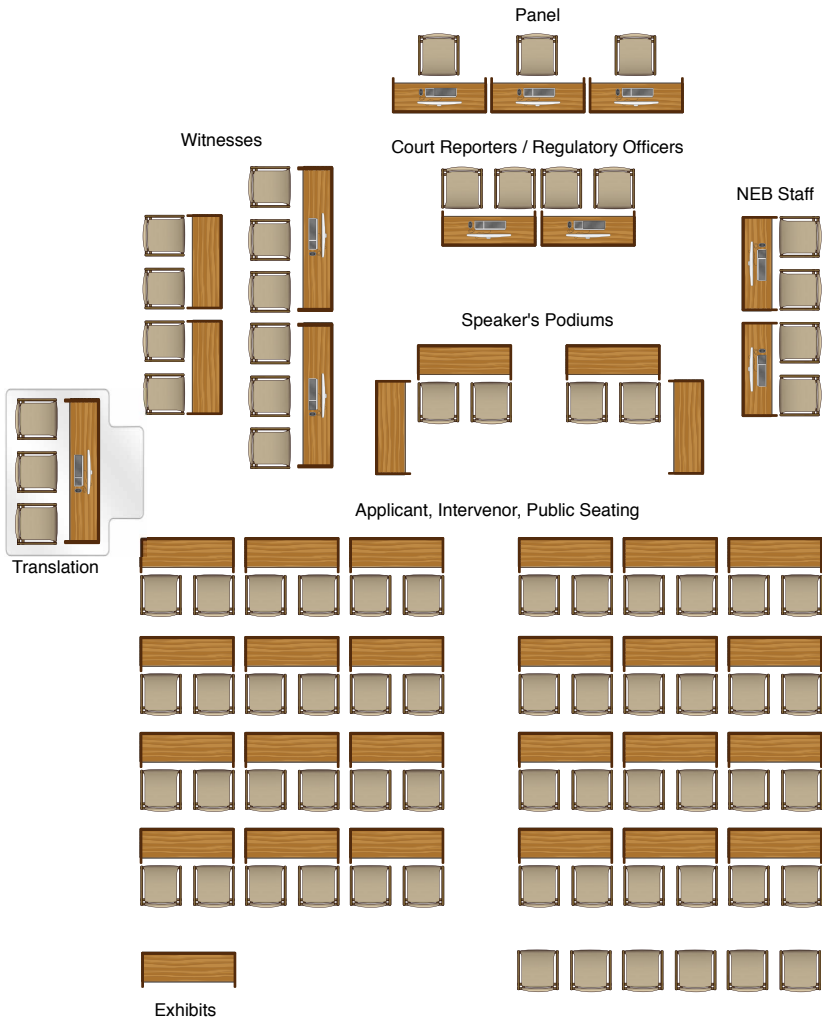
Court Reporters

Court reporters sit near the panel members and capture every word that is said during the hearing. These transcripts are available for viewing to anyone who would like to read what happened in the hearing on a next day service. The transcripts are available for viewing on the NEB website and in the NEB Library. The applicant, government participants and the intervenors are each entitled to one copy at no cost, on request. You may purchase additional copies from the court reporters.

How is the room set up for most hearings?

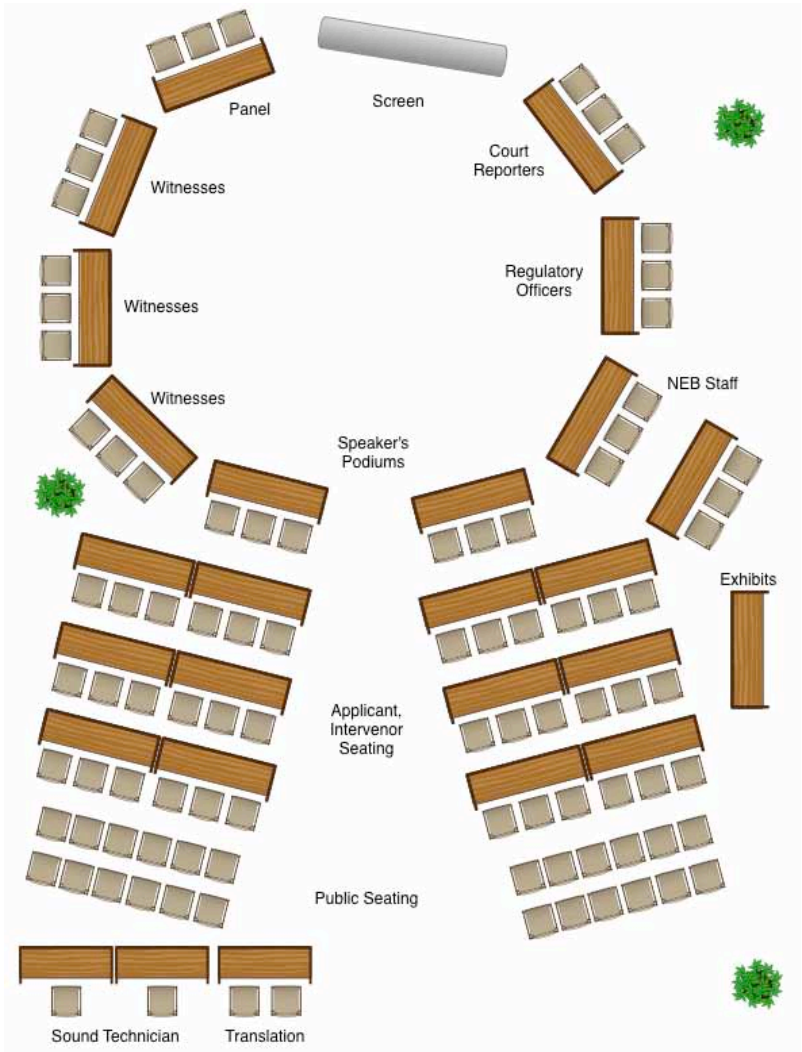
If a hearing is taking place in the NEB Hearing Room in Calgary, the room set up resembles a court of law. The panel members sit at the front facing into the room. Lawyers or intervenors who are speaking to the panel, face the panel when it is their turn to speak. NEB staff is seated along one side and witnesses who have been brought are seated on the other side. There is also room for members of the public to observe the hearing process.

Calgary Hearing Room Set Up



If the hearing is taking place in a community, the room set up may depend on the facilities. Some hearings are held in community halls, hotel conference rooms or even school auditoriums. When a hearing is taking place outside of Calgary, the room set up may be more informal. Those who are participating, including the NEB panel members, applicant and intervenors, can be seated in a circular format.

Informal Hearing Room Set Up



Evidence is frequently presented in electronic format for all to see during the hearing. Large screens are set up at the front of the room and evidence is shown on these screens. The evidence shown is often text, maps or graphs that have been filed electronically on the NEB website. This makes it much easier to show participants what people are talking about rather than have people try and find their place in a paper copy. The exhibit list includes all evidence in the hearing. Participants should refer to this list when requesting evidence be displayed on the screens.

NEB hearings may also involve interpreters. These people make the hearing available in both English and French depending on the participants. Headsets are available so you can easily understand all of the speakers.

Upon request, interpreters will provide the translation for the online broadcasting of the hearings. This is available through the NEB website (www.neb-one.gc.ca).

What happens at an NEB oral hearing?

Generally, all oral hearings follow a similar process. The hearing begins with an opening statement by the NEB panel chair followed by the registration of each participant. At this time, participants state, among other things, their name, who they wish to cross-examine and whether there are any matters or motions they want to have considered before the evidence is presented.

Next, the applicant presents its case. Witnesses for the applicant are sworn in and they adopt their evidence. They may then be cross-examined on this evidence by intervenors. NEB lawyers and the panel members may also ask questions of the witnesses.

After questioning of the applicant's witnesses has finished, each intervenor goes through the same process of presenting witnesses for cross-examination. This time, the applicant is the first to cross-examine the witnesses, followed by other intervenors and then the NEB lawyer and panel members. Once all questioning of intervenor witnesses has concluded, the applicant is given one final chance to introduce any reply evidence to address matters raised in the intervenor evidence or cross-examination.

Sometime before the beginning of, or during, the oral hearing, the panel will issue the draft conditions for the project for comment. These are conditions the panel would consider attaching to any approval it may issue for the project, should it approve the application. Issuance of the draft conditions for comment is legally required, and does not mean that the panel has made its decision. Comments from the applicant and intervenors on the draft conditions are usually given before or during final argument.

The last stage of the hearing is known as final argument. This is where each party summarizes their position, based on the evidence filed, and presents it to the panel. The applicant leads off the final argument session followed by the other parties. Once all intervenors and governments participants have made their final arguments, the applicant has the opportunity to reply to those arguments.

GENERAL ORAL HEARING EVENTS

- 1. Opening statement by the panel followed by the registration of each participant.**
- 2. Applicant presents its witnesses for cross-examination by other participants in the hearing.**
- 3. Intervenors follow the same process of presenting evidence and witnesses for cross-examination by other participants who take an opposing position.**
- 4. The panel may set aside a specific time to hear oral statements during the oral hearing.**
- 5. The applicant is given one final chance to introduce any new oral evidence to address any matters raised in the intervenors' evidence or cross-examination.**
- 6. The panel issues the draft conditions for comment (may occur before or during the hearing).**
- 7. Parties summarize their position in the final argument, beginning with the applicant followed by the intervenors and government participants.**
- 8. The applicant is allowed a final reply argument.**

After the final argument, what happens? Will the panel announce their decision?

The panel usually will not make a decision on the application right after the final argument. Generally, the panel takes some time to review and consider the evidence presented.

Decisions are made in the overall public interest which is inclusive of all Canadians. It refers to a balance of economic, environmental and social interests that changes as society's values and preferences evolve. The NEB must estimate the overall public good a project may create and its potential negative aspects. The NEB must also weigh its various impacts and make a decision.

When the panel is taking the time to consider the hearing evidence, they are also looking at what conditions they may place on an approval based on the draft conditions that were issued during the hearing and any comments they received. The company must meet all of the conditions set by the NEB. Some examples of conditions include:

- restricting the timing of construction;
- limiting impacts on agricultural growing;
- requiring a noise levels report;
- conducting a rare plant study; and
- providing construction technology details.

Panels try to release their decision within 12 weeks of the conclusion of the hearing. In more complex hearings it may take longer to make the decision. The outcome of the hearing is announced in a publication called the Reasons for Decision. This document is available on the NEB website and a news release announcing the decision is also sent to media.

After the Hearing

The decisions made by the NEB panel can have wide-spread effects. Not only does it have an impact on the companies involved, but it can also impact the communities where the project is located. This may include a period of construction activity in a community or near someone's farm. It could also impact jobs and the local economy.

If the NEB approved the application, the release of a decision is the final step in processing an application. But it certainly isn't the end to the NEB's engagement in the project or with the public. The NEB continues to be involved in ensuring the conditions are met, and, for most projects, regulating the project over its life cycle, through to its abandonment. The NEB is always open to feedback from the public on any matters related to a specific project or other energy regulation issues.

Is the decision made by the panel final?

If the NEB finds that a project is in the public interest, it will approve the application. For facilities that require a certificate, the certificate must be approved by the Governor in Council (GIC). The GIC may deny a certificate but it cannot make any changes to the conditions on an approval or the NEB's decision. If the NEB denies an application, the GIC cannot overrule the NEB and approve it.

Decisions on applications made by the panel may be appealed to Canada's Federal Court of Appeal but only on a point of law or jurisdiction and only with leave of the Court. An appeal cannot be made simply because someone is unhappy with the outcome. A leave to appeal must be filed within 30 days following the NEB decision.

There is also the option for the NEB to review or alter decisions. Parties involved in the hearing can ask for a review but only if specific requirements are met. If the NEB decides to hold a review, it may hold another public hearing or ask for further input from people interested in the project.

Do I have an opportunity to provide feedback to the NEB on the hearing process?

Yes. If you have been an intervenor in the hearing, you will be sent a post-hearing survey. This survey is your opportunity to tell the NEB what you thought of the entire hearing process from the Hearing Order through to the hearing procedures and location. Your feedback is reviewed and used to improve the NEB hearing process.

If you did not participate as an intervenor but still wanted to provide feedback, you can contact the NEB and provide your thoughts. All of the various ways you can contact the NEB are listed below.

If the NEB approves a project, what is its role?

The NEB takes a life cycle approach to regulation, meaning it doesn't just make a decision and move on to the next application. The NEB is involved in most projects from start to finish. This includes the application process, construction and long-term operation of the facilities and finally the abandonment of the project.

If the NEB approves a project, there may be conditions set on that approval. The company is obligated to follow through with all of these conditions and the NEB makes sure it does through various means including inspections. Inspections may take place to ensure the project is continuing to operate in a safe manner for the benefit of Canadians. If inspectors find that the company is not meeting the conditions, the NEB can take action to enforce these conditions. This may include talking to the company, issuing a written request to correct the problem, or, in certain circumstances, ordering the company to stop construction or operation.

What involvement can I have in the project after it has been approved?

You can at any time contact the NEB if you have a concern with a project. For example, potential environmental matters associated with energy facilities are likely to be noticed first by landowners or those living near the facilities. Anyone who has a concern about the project is welcome to contact the NEB and you should also contact the company.

If you're a landowner and a pipeline or power line project crosses your land, you may also contact the NEB to use one of the programs to help you work out any issues you may have with the company. The Landowner Complaint Resolution Program and the Appropriate Dispute Resolution (ADR) process are options for resolving outstanding

issues that are not related to compensation. ADR could take the form of a meeting between you and the company, which may be facilitated by our trained NEB staff or by another neutral third party. For more information about the Landowner Complaint Resolution Program or ADR, please contact the NEB.

Pipeline Regulation in Canada: A Guide for Landowners and the Public

The National Energy Board (NEB or Board) has produced a guide to help you understand the regulatory process that pipeline projects must go through before they can be built, during construction and operation, and when they are abandoned. It is available online at www.neb-one.gc.ca, or you can request a copy from the NEB library.

How can I contact the NEB?

The NEB wants to hear from people who have been involved in our process or who are generally looking for information on energy-related projects regulated by the NEB in Canada. There are a number of ways people can access information:

NEB website

The most current information about the NEB's regulatory process can be found on the NEB website www.neb-one.gc.ca.

E-mail

The NEB has a general e-mail account for energy-related inquiries. You can submit your question to info@neb-one.gc.ca and your question will be responded to in two working days. If your question is more complicated, more time may be needed to respond.

Telephone / Fax

There are many people at the NEB who may be able to answer your specific question. Please contact the NEB at 403-292-4800 or toll free at 1-800-899-1265. To send a fax, dial 403-292-5503 or toll free 1-877-288-8803.

Mail

If you do not have access to the Internet and wish to submit your question or comments in writing, you can also send a letter. The mailing address is:

National Energy Board
444 Seventh Avenue SW
Calgary, Alberta
T2P 0X8

NEB Library

The NEB Library is an excellent source of information for people on energy issues or NEB matters. The Library is able to respond to inquiries via e-mail, telephone or mail.

E-mail: library@neb-one.gc.ca
Telephone: 403-299-3561 or toll free 1-800-899-1265

If you're looking for an NEB publication, you can contact the publications coordinator in the Library at publications@neb-one.gc.ca or 403-292-3562 or via the toll free number above. Most NEB publications are also available on the website www.neb-one.gc.ca.

National Energy Board

444 Seventh Avenue S.W.

Calgary, Alberta T2P 0X8

403-292-4800

1-800-899-1265

www.neb-one.gc.ca

