



National Energy
Board

Office national
de l'énergie

Hearing Process

HANDBOOK



A GUIDE TO NEB HEARINGS

Canada

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represented by the National Energy Board 2013

**National Energy Board
Hearing Process Handbook**

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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 facility or transportation system, such as a pipeline or power line. In some cases, that permission must come from the National Energy Board (NEB or the Board).

Before a decision is made on an application for a major pipeline or power line project, the Board will hold a public hearing. This allows the company proposing the project, and directly affected persons as well as other persons with relevant information or expertise, a chance to provide their views in support of or against a project. The decision on whether or not to approve a major pipeline project on the basis of public interest is made by the federal government (Governor in Council) based on recommendations from the NEB.

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

Who is the National Energy Board?

The NEB is an independent federal regulator established in 1959 to promote safety and security, environmental protection and economic efficiency. The NEB does this 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* (NEB Act), which sets out the mandate for the NEB. The NEB Act establishes the NEB’s authority over energy projects and sets the regulatory boundaries for making decisions.

Why does the NEB hold hearings?

A public hearing gives participants in the hearing an opportunity to express their point of view, and possibly ask or answer questions about a proposed project or application. This provides the NEB with the information it needs to make a transparent, fair and objective recommendation or decision on whether or not a project should be allowed to proceed or an application should be approved.

When is the NEB required to have a hearing?

There are many different kinds of applications that the NEB receives. Some of these applications require a public hearing. These include:

- applications for the construction and operation of major international or interprovincial pipelines , and applications for the construction and operation of certain international power lines;
- applications to abandon a pipeline; and
- landowner oppositions to the detailed route of an approved pipeline.

A hearing may also be held if the NEB decides one is warranted, such as to review a complex toll and tariff application.

What happens in an NEB hearing?

Hearings at the NEB can be conducted solely in writing or through a combination of written and oral submissions. 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 is found later in this booklet.

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).

An oral hearing is what most people think of when they think of a hearing. However, even this type of hearing begins with a written process. Parties file their written evidence and may 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 may be permitted to ask witnesses oral questions and present their final argument or a summary of their position based on the evidence.

What type of information is considered during a hearing?

During 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 directly affected Aboriginal groups;
- impact of the project on directly affected persons;
- financial responsibility of the applicant;
- economic feasibility of the project; and
- the Canadian public interest.

What happens after the hearing?

If an application is approved, the company has permission to construct, operate and maintain the pipeline or power line. If an import or export licence application is approved, the company can import or export according to the terms of the licence. Toll applications 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 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 that 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 on the approval that the company must follow.

If you would like 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.

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.

First Steps in the Hearing Process

The hearing process plays an important role in the National Energy Board's regulatory practice. It is during the hearing process that information about many aspects of a proposed project is gathered from the company applying for the project and other participants. The process is guided by the *National Energy Board Rules of Practice and Procedures* available on the website under "Acts and Regulations", and by the Hearing Order for that application.

These basic hearing steps are explained in further detail in the pages that follow.

BASIC HEARING STEPS:

- 1. An application is filed by the company with the NEB.**
- 2. A Hearing Order or process letter is prepared and the public is notified about the hearing.**
- 3. Anyone wishing to participate in the hearing must apply to the NEB.**
- 4. The NEB will decide who can participate and how.**
- 5. The company and those who are allowed to be Intervenor file written evidence.**
- 6. Information requests are submitted and answered based on the evidence that is filed.**
- 7. People who have been allowed to participate in ways other than as an Intervenor follow the directions listed in the Hearing Order. If there is an oral hearing, Intervenor may gather on a specific date to ask oral questions of witnesses and provide final argument.**
- 8. For major pipeline project applications, the NEB prepares a report containing its recommendations. This report is sent to Governor in Council and made available to the public. For other types of applications or projects, the NEB will make the decision on the application.**

What is a Hearing Order?

Once the NEB decides that an application requires a hearing, the NEB issues a process letter or a document called a Hearing Order. A Hearing Order usually gives a brief description of the proposed project or application, 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. If there is an oral portion, the date, location and time of the oral hearing may be shared if these details are known.

The Hearing Order includes information on how people might participate in the hearing. The process to apply to participate in a hearing will involve filling in an online form with details such as how the project will impact you or your group. Once the hearing participants are determined by the Board, they will be provided with further details. A Hearing Order may contain detailed information such as the deadlines for the various steps in the process, including submitting evidence or letters of comment and asking questions. This information may also be updated during the hearing process through a document called a Procedural Update. Deadlines are set to be as fair as possible to everyone involved in the process and must be respected.

The NEB may send out a news release when a Hearing Order is issued and the Hearing Order is posted on the NEB's website. A company may also publish notice of the hearing in newspapers that serve the area around the proposed project or send the notice directly to persons that may be affected.

If there is an oral hearing portion, what takes place before the oral hearing date?

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 include a List of Issues for a particular application in the Hearing Order or other process letter. These are the issues that the Board will consider during its assessment of the application. If you are participating in the hearing, your input must be related to the issues on the list.

The List of Issues keeps everyone focused on the same set of topics. In some cases, the Board may include an explanation of what issues will not be considered in the hearing.

Public Information Sessions

NEB staff may conduct online seminars or go to communities that may be impacted by the proposed project to conduct public information sessions. These informal meetings are held early in the process, sometimes before an application is even filed. These public information sessions provide people with information on the hearing process, how a person can apply to participate, and the role of the NEB. Information sessions are not the time for people to voice their opinion on a project; rather it is a chance to learn how to you might bring your views to the Board.

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

Information Requests

If you are an Intervenor in the hearing, you may ask questions or request additional information about the application from the company or from others who have filed written evidence in the form of an information request (also called an IR). The NEB can also issue information requests to anyone involved in the hearing. Generally, these written requests and responses are posted electronically on the NEB's public registry, accessible through the NEB's website.

Technical or Procedural Conferences

Conferences can be used to identify, clarify, narrow or resolve technical or procedural issues during a hearing process. They may also be used to collect views on process issues or help to coordinate the collection of information from Intervenors.

The Board may hold a technical conference if it determines that a conference may resolve an issue more quickly.

How can I access written information about an application?

The majority of the written information, including the complete application, any letters of comment, or correspondence between the NEB, the company, and Intervenors can be found in the public registry on the NEB's website (www.neb-one.gc.ca).

To find documents related to a specific hearing, go to the NEB's website. You can find a link to the hearing you are interested in on the right hand side, which will take you to the project webpage. From there, you can access the public registry by selecting Regulatory Documents. There will also be information in the Hearing Order about how to find key information about the project and the assessment process.

Information on the record that cannot be accessed online may be requested from the NEB Library. Some limited information filed during the hearing may not be available to the public if the NEB has allowed it to be filed confidentially.

If you know the Hearing Order number, you can use it to search the NEB's website for information. You can also view a copy of the Hearing Order and the application in the NEB Library. Often the company is required to place a copy of the application in libraries or other public locations near the proposed project. These locations will be listed in the Hearing Order.

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 relevant information or expertise. This is particularly true for those agencies that look at environmental or energy issues.

Participating in a Public Hearing

How is the Board going to decide who is allowed to participate?

Section 55.2 of the NEB Act sets out when the Board will allow a person to participate in a hearing about an application to construct and operate an oil or gas pipeline or certain power lines. A person may be an individual, company, organization, or group.

If you wish to participate, you must demonstrate to the Board's satisfaction that you are: a) directly affected by the proposed project; b) you have relevant information or expertise for the Board to consider; or c) both.

Directly Affected Person:

The Board must hear from any person who, in the Board's opinion, is directly affected by the granting or refusing of a project application. The Board decides on a case-by-case basis who is directly affected. The Board may consider these factors when making this decision:

1. The nature of the person's interest:
 - Whether a person has a specific and detailed interest, rather than a general public interest.
 - Examples of interests that could support participation are:
 - commercial, property or other financial interest (including employment);
 - personal use and occupancy of land and resources; or
 - use of land and resources for traditional Aboriginal purposes.
2. Whether the granting or refusing of a project application causes a direct effect on the person's interest:
 - The degree of connection between the project and the interest.
 - The likelihood and severity of harm a person is exposed to.
 - The frequency and duration of a person's use of the area near the project.

Relevant Information or Expertise:

The Board may choose to hear from any person who, in the Board's opinion, has relevant information or expertise.

1. The Board may consider these factors when deciding if a person has relevant information:
 - the source of the person's knowledge (for example, local, regional or Aboriginal);
 - the extent to which the information is within the project scope and related to the list of issues; and
 - how much value the information will add to the Board's decision or recommendation.
2. The Board may consider these factors when deciding if a person has relevant expertise:
 - the person's qualifications (for example, the person has specialist knowledge and experience);
 - the extent to which the person's expertise is within the project scope and related to the list of issues; and
 - how much value the information will add to the Board's decision or recommendation.

For participation in other types of hearings, such as tolls hearings, the Board will allow a person to participate if a person's interest is sufficiently impacted by the Board decision. The Board may also allow a person to participate if that person's participation will assist the Board in making its decision.

How much work is involved in participating in a hearing?

The amount of preparation and work commitment depends on how you are participating. Writing a letter of comment is the least amount of work. 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.

Who will be able to access my information?

The NEB maintains a public record of the information collected during an NEB hearing process and who filed it. Evidence filed for an application from companies and Intervenor is made available to the public on the NEB website, the oral portion of the hearing is broadcast on the NEB website, and transcripts from each day of the hearing are available online.

When a party submits a document to the Board, it is placed in the electronic repository located on the Board's website. Participants should be aware that anything they file is a public document, including their contact information, and it forms an official legal record of the NEB's proceedings.

There are some circumstances where certain information may be kept confidential but this requires permission from the Board.

What are the typical methods of participation in an NEB hearing?

The process chosen by the NEB for a project's assessment may change for each application. There are typically two ways that individuals or groups may be able to participate in a hearing: 1) by writing a Letter of Comment; or 2) as an Intervenor.

1) Letters of Comment

A Letter of Comment is a way of sharing your views on the project with the Board in writing. You will not be able to ask questions about other people's evidence or make a final argument.

If the Board decides that you may participate by writing a Letter of Comment, you may then submit your letter. Your letter should include:

- your name, mailing address, and phone number;
- the name of your organization, if you represent one;
- the hearing number and file number;
- comments on how you will be impacted positively or negatively by the project;
- comments or suggestions for conditions that should be placed on any approval; and
- any information that explains or supports your comments.

In order to be considered, Letters of Comment must:

- come from a person the Board has allowed to participate;
- be filed with the Board online, by mail, or by fax or courier;
- be sent to the company;
- be relevant to the List of Issues;
- not be a form letter or petition; and
- be filed by the deadline in the Hearing Order or other process letter.

The NEB will not accept unsolicited Letters of Comment and they will not be placed on the record for the hearing if sent by anyone who is not a participant.

Letters of Comment 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 that has been tested through questioning in a hearing.

Letters of Comment that are properly filed become public documents once they have been submitted and are able to be viewed on the public registry, accessible through the NEB's website.

2) *Intervenor*

As an Intervenor, you have the right to receive all of the documents filed during the hearing process. If you have internet access, a notice that these documents are available online will be sent directly to you. If you cannot access documents online, you can choose to receive a copy in the mail or by fax.

During the hearing process, you may 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. In some cases, Aboriginal Intervenors may also provide oral traditional evidence.

While you will not be required to attend the entire oral portion of the hearing, you should try to attend at the beginning of the first day so you can register your appearance. This means that you will introduce yourself to the Board and tell the Board how much you will be participating in the oral hearing, for example, whether you intend on questioning all of the company's witnesses or only some of them.

Also, you should try to attend on the days when the issues you are most interested in are being discussed. 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.

If you share similar interests about the project as other people, you might consider applying to participate as a group and having only one or two representatives speaking for that group if you are allowed to participate as an Intervenor.

Will I be given any compensation for my participation costs?

The NEB has a Participant Funding Program (PFP) to support participation as an Intervenor in oral facility hearings. Eligible recipients include individuals, Aboriginal groups, landowners, incorporated non-industry not-for-profit organizations, or other interest groups who the Board allows to participate in the hearing as Intervenors.

All funding recipients must sign a Standard Contribution Agreement before funding will be released and the funding can only be applied to expenses that occur after the Standard Contribution Agreement is signed. To find out 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 select the hearing you are interested in from the menu on the right hand side.

If you participate in a detailed route hearing, PFP is not available, but you may claim your costs of participating from the company under the NEB Act. Receipts must show the amount of the actual costs which must be reasonable, to whom they are owed, and the reason for the costs. Legal fees or costs for travel to attend the hearing could be acceptable costs. If you and the company cannot settle on the amount you wish to claim, the NEB will determine a reasonable amount. For more information, you may contact the NEB and ask to speak to someone about detailed route hearing costs.

How do I apply to participate?

To apply to participate, you are required to fill in and submit an Application to Participate (ATP) form. The ATP form for the hearing you are interested in will be available on the Board's website.

In order to be considered, the Application to Participate form must:

- be properly filed online with the Board, using the template form;
- be served on the company (which is done automatically when the form is submitted online);
- provide complete information for the Board to consider;
- clearly demonstrate your interest and connection to the project;
- clearly demonstrate that the issues you plan to speak to are relevant to the List of Issues; and
- be filed by the deadline in the Hearing Order or other process letter.

If you need to submit the ATP form in a different method, you must contact the Process Advisor.

You are responsible for providing the necessary information to justify why you should be allowed to participate in the hearing. The Board will use the information you provide to decide if you will be allowed to participate and how you will be allowed to participate.

How will I know if I am allowed to participate?

The Board will decide if you are allowed to participate and what method of participation you may use after it has considered all Applications to Participate. The Board will send a letter to everyone who applied to participate that identifies who may participate and how. This may be called a List of Parties. A List of Parties will also contain the names of the people who will represent the applicant, the names of any representatives of other participants, and the contact information for the company, government participants and Intervenors.

I am not a participant but I still want to know what is going on. How can I do that?

You can follow the hearing by:

- reading information about the hearing on our website;
- reading the evidence that has been filed on the record and included on the public registry;
- listening to live broadcasts of any oral portion of the hearing through our website;
- attending the oral portion of the hearing in person if the opportunity is provided; or
- reading the daily transcripts of the hearing, which are typically posted on the website the following day.

Now that You are a Participant

When can I send my Letter of Comment?

Once the Board has notified you that you are allowed to write a Letter of Comment, you may submit your Letter of Comment at any time before the deadline set in the Hearing Order or Procedural Update. The previous section of this booklet called *Participating in a Public Hearing* outlines what to include in your Letter of Comment.

You should send only one Letter of Comment. If you send another letter, the Board may not allow it to be added to the public registry. Form letters and petitions are not accepted as Letters of Comment.

Do I need a lawyer to participate in a hearing?

You do not need to hire a lawyer to participate in an NEB hearing or any other NEB process. Parts of the NEB hearing process are formal and when you attend the oral portion of a hearing it may feel like a court setting. Procedures may be unfamiliar to you. However, the Board will identify a Process Advisor who will be able to help you understand the process and how to participate in it effectively. The Process Advisor assigned to the hearing will be listed in the Hearing Order or on the Board's website.

In certain parts of the oral portion of the hearing, you can designate a person to write or speak on your behalf - that person does not have to be a lawyer. Your representative can help you to prepare your written information for submitting with the Board. Your representative cannot answer questions on your evidence at the oral portion of the hearing, but they can ask questions on your behalf. Only you can answer questions on your own evidence at the oral hearing.

For Intervenors:

How should I prepare for the oral portion of the hearing?

Participating as an Intervenor 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 any questions you may want to ask the company or other Intervenors during the hearing in advance. Be prepared to delete questions that have been asked by someone who has gone before you and where you have received a satisfactory response.
3. Prepare your questions and argument so they are organized, complete, and relevant to the List of Issues.

4. Bring a copy of all the evidence that you have previously filed with the Board with you, and review your evidence before you participate.
5. Be prepared to answer questions about your evidence.

Evidence

Evidence refers to reports, statements, photographs and other material or information that supports the view you are presenting. It must be filed with the NEB and sent to the company and other Intervenor by the deadlines set out in the Hearing Order. Most evidence is filed electronically. Any evidence that you provide must be adopted under oath, usually during the oral portion of the hearing. This means that you will be sworn in or affirmed, and will be asked to 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. Sometimes you may adopt your evidence in writing by filing an affidavit. Instructions and forms to do this are usually provided in a process letter closer to the date of the oral hearing.

At the oral portion of the hearing or in information requests, you may be asked questions by the Board, the company or other Intervenor in the hearing about the evidence you have submitted. Be prepared to answer questions on your evidence.

Witnesses

Witnesses are those people who can best answer questions on the evidence you have filed. It could be you, a professional expert, or a lay person. When deciding who would be a good witness for you, remember that they must be able to confirm that the evidence they will be answering questions on was either prepared by them or under their direction and control. So, if you file a report prepared by someone else, that person should be available to answer questions on it. You should be prepared to have a witness (that is, you or any other person) available to answer questions on all the evidence you have filed. If a relevant question is asked about your evidence that you or your witness is not able to answer, that evidence may be given less weight by the Board during its deliberations.

The company will normally have several witnesses or panels of witnesses to answer questions related to any issue in its application.

Cross-examination

During cross-examination, certain participants in the hearing are permitted to ask the witnesses questions about their evidence.

If you are an Intervenor, you may be given the opportunity to cross-examine parties in the hearing (and their witnesses) who take an opposing position to you and have filed evidence. You must be available to ask your questions when those parties and witnesses are appearing at the hearing to be cross-examined. Once the time for questioning a witness or party has passed, and the witnesses are allowed to leave (also known as “being excused”), you have missed your chance to ask them questions.

When planning your questions for cross-examination, make sure your questions are related to that witness’ area of expertise or to the evidence that particular witness prepared. It is not necessary to ask questions that have already been asked by another Intervenor unless you were not satisfied with the response and need more information.

Motions

Motions are formal requests that require a decision by the NEB panel members. Examples of motions include asking for an Intervenor to respond to a question he or she refused to answer, asking for a more complete response to a written question you asked, asking for a change in the procedure, or asking for an extension to a deadline.

To make a motion, written copies of the motion along with any supporting documents must be provided to the Board, the company, and all other Intervenor. The Board 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 the oral portion of the hearing and the Board may make a decision (also known as a ruling) immediately or within a short timeframe. Complex motions may require more time. The Board may ask for comments on motions before giving its ruling.

The Process Advisor for your hearing can provide you with a template to use when preparing a motion.

Objections during the oral hearing

You might make an objection if you disagree with the way another person is cross-examining a witness or how something is being done. For example, an objection may be made about the relevance or appropriateness of questions asked during cross-examination. Objections might also be made when someone tries to introduce new evidence at a time when they are not allowed. The Board will hear from the parties involved and decide whether to allow the objection.

Final argument

After cross-examination and any reply evidence is completed, final argument occurs. Final argument involves telling the Board your position on the project and what you think the Board should decide or recommend. You can only use the evidence on the record to support your position. You cannot present any new evidence when you make your final argument. The Board will indicate the process for final argument in a Procedural Update, such as whether final argument will be made in writing or given orally, if there are time limits on oral argument, and where argument will take place.

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 people attending the hearing to behave in a courteous manner toward the Board members, NEB staff, and all attendees.

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 so that attendees are more comfortable.

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

Who makes up the hearing panel?

NEB hearings are usually conducted by a panel of three people. These people are NEB Board members who have been assigned to make a recommendation or decision on behalf of the full Board. This panel is called the Board because it is acting on behalf of the 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 are similar to judges. They must read and listen to all the evidence that is filed on the project, and may ask questions of the applicant and other participants. They also make the recommendation to GIC or a final decision on whether to approve or deny an application.

Where are oral hearings held?

The decision on where to hold the oral portion of a hearing is made by the Board. Many are held in the NEB Hearing Room in Calgary. People may attend or participate from another location using technology and PFP may also be used to help pay for travel costs.

Sometimes the oral portion of the hearing may take place in a community impacted by the proposed project, near those who are participating. There may be more than one location. The hearing room might be set up in a hotel conference room or in a community hall.

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

NEB Staff

Process Advisors are assigned to each hearing project to assist the public and participants with understanding the hearing process and how to participate effectively. Process Advisors often offer information sessions or workshops to explain the process. They are available to answer questions on the telephone or by email and may attend the oral portion of the hearing. The contact information for the Process Advisor as well as what they can and cannot do is in the Hearing Order.

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. Regulatory Officers are essential to ensuring the hearing process runs smoothly.

Other NEB staff are there to advise the Board on technical matters, such as issues relating to engineering, geology, the environment, jurisdiction, finance, or socio-economic matters.

Lawyers

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

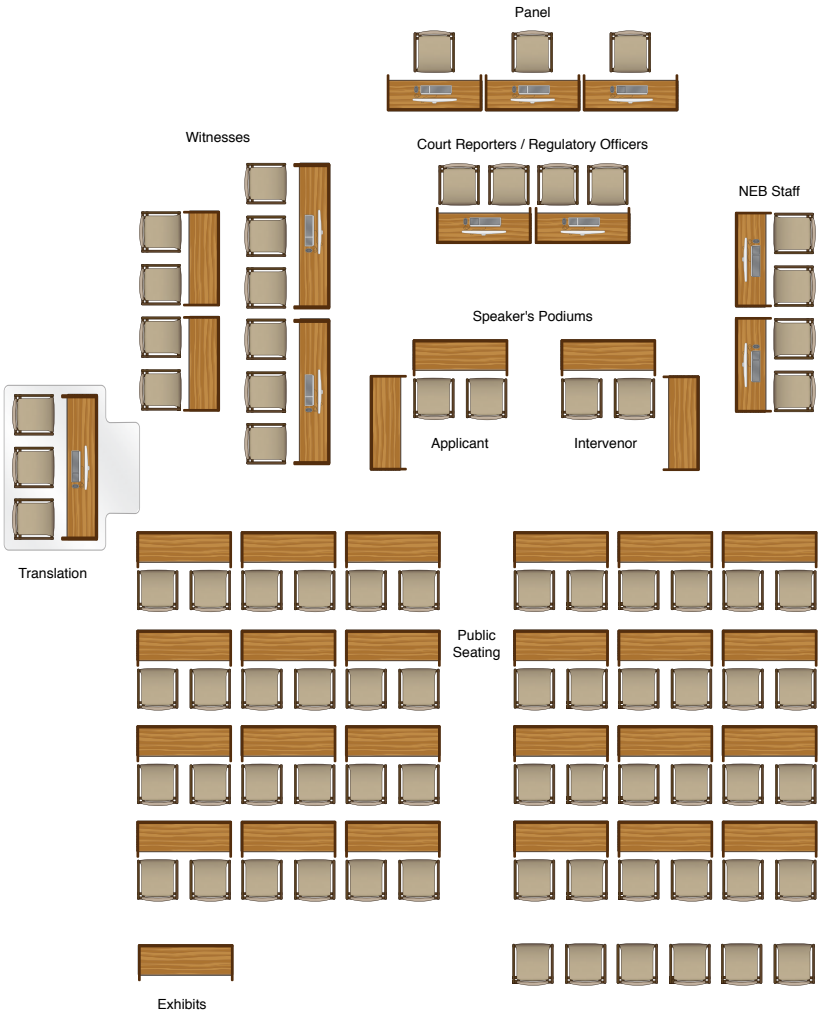
NEB lawyers serve two purposes. The first is to provide advice to the Board on legal matters, including how the hearing should be conducted in a fair manner. Their second role is to question witnesses in order to gather the information needed for the Board to make a recommendation or decision.

NEB lawyers are not there to support or oppose the applicant or the Intervenor. They may assist anyone who does not have their own legal representation by answering legal process-related questions. NEB lawyers cannot work on behalf of participants by conducting cross-examinations or presenting evidence for them.

Court Reporters

Court reporters sit near the Board members and capture every word that is said during the hearing. Transcripts are prepared at the end of each day and are available to anyone to read by the following day. The transcripts are available on the NEB website and in the NEB Library. The applicant, government participants and the Intervenor are each entitled to one copy at no cost, on request. Additional copies may be purchased from the court reporters if arranged before-hand. The contact information for the court reporters will be found in the Hearing Order.

Calgary Hearing Room Set Up



Interpreters

Some hearings may involve interpreters. These people make the hearing available in both English and French, depending on the needs of participants. When the hearing is in both languages, headsets will be available in the hearing room so you can listen in the official language of your choice. The hearing will also be broadcast online through the NEB website in both languages.

How is the room set up for most hearings?

The room set up often resembles a courtroom. Generally, the panel members sit at the front facing the people in the room. Lawyers or Intervenors speaking to the Board or asking questions face the Board members. NEB staff is seated along one side and witnesses are seated on the other side. Depending on the size of the hearing, the number of participants and the location of the hearing, there may also be room for people to respectfully observe the hearing.

If the hearing is taking place in a community, the room set up may depend on the building being used and may be more informal. For example, those who are participating, including the Board members, company and Intervenors, could be seated in a circular format. Evidence is frequently presented electronically for all to see at the hearing. Large screens are set up at the front of the room to display the evidence. This includes text, maps or graphs that have been filed electronically. This makes it much easier to show participants what people are talking about rather than waiting for everyone to find their place in a paper copy. The exhibit list sets out the identifying numbers for all evidence that has been filed in the hearing. Participants must refer to the identifying numbers when asking for evidence to be displayed on the screens.

What happens at an NEB oral hearing?*

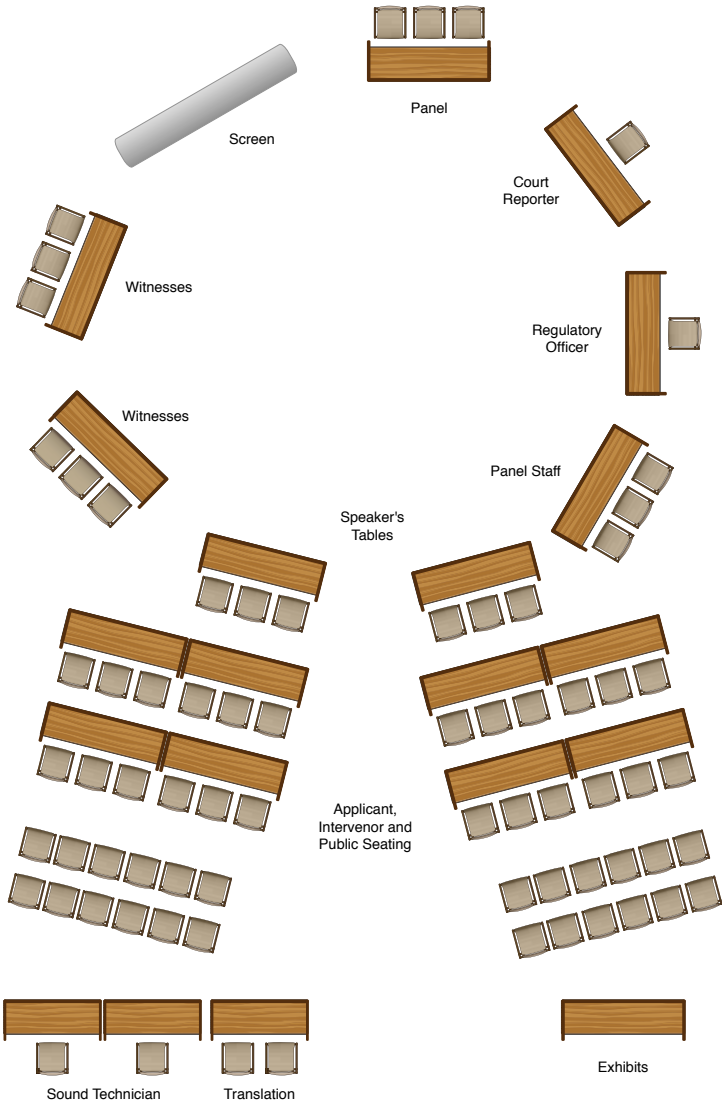
*** Note this is for a hearing that includes oral cross-examination. Some oral hearing portions are for final argument only.**

The oral portion of a hearing generally begins with an opening statement by the NEB Presiding Member followed by the registration of each party. At this time, parties state their name, who they wish to cross-examine and whether there are any matters or motions they want considered right away.

Next, the company (referred to as the applicant) presents its witnesses for cross-examination. Witnesses for the company are sworn in and they adopt their pre-filed written evidence. They may then be cross-examined on this evidence by Intervenors. NEB lawyers and the Board may also ask questions of the witnesses.

After questioning of the company's witnesses has finished, each Intervenor goes through the same process of adopting their pre-filed written evidence and presenting their witnesses for cross-examination. This time, the company is the first to cross-examine the witnesses, followed by other Intervenors and then the NEB lawyer and the Board. Once all questioning of Intervenor witnesses has concluded, the company may provide any reply evidence to address matters raised during cross-examination.

Informal Hearing Room Set Up



Sometime before the beginning of, or during, the oral hearing portion, the Board will issue draft conditions for comment. These are conditions the Board may consider recommending or attaching to any approval that may be issued, if the application is approved. Issuance of the draft conditions for comment is legally required, and does not mean that the Board has made its decision or determined what its recommendation will be to GIC. Comments from the company and Intervenor on the draft conditions are usually heard before or during final argument.

The last stage of the hearing is known as final argument. During final argument each party summarizes their position, based on the evidence filed, and presents it to the Board. The company leads off the final argument phase followed by the other participants. Once everyone has made their final argument, the company has the opportunity to reply to those arguments.

SUMMARY OF ORAL HEARING EVENTS

- 1. Opening statement by the Presiding Board member followed by the registration of each party.**
- 2. Company (Applicant) presents its witnesses for cross-examination by other parties.**
- 3. Intervenors follow the same process of witnesses for cross-examination by other participants who take an opposing position.**
- 4. The Board may set aside a specific time to hear oral statements during the oral hearing, if oral statements are part of the proceeding.**
- 5. The company is given the chance to reply to any new matters raised during cross-examination.**
- 6. The Board issues the draft conditions for comment (may occur before or during the hearing).**
- 7. Parties summarize their position in their final argument, beginning with the company, followed by the Intervenors and then Government Participants (if there are any).**
- 8. The company is allowed a final reply argument.**

After the final argument, what happens? When will the Board announce its recommendation or decision?

Generally, the Board takes some time to thoroughly consider all the evidence presented before it announces its recommendation to GIC on the major pipeline application or makes a final decision in other cases.

Recommendations and decisions are made based on the Canadian public interest. The public interest refers to a balance of economic, environmental and social interests that changes as society's values and preferences evolve. The NEB must assess the overall public good a project may create and its potential negative aspects. The NEB must also weigh its various impacts and make a recommendation or decision.

When the Board is taking the time to consider the evidence, it is also looking at what conditions should be placed on any approval. 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.

In most cases, the Board releases its recommendations report or decision within 12 weeks of the conclusion of the hearing. In more complex hearings, it may take longer. The outcome of the hearing is announced in a publication called the NEB Report or the NEB Decision (sometimes this is called a blue book because of its standard blue cover). This document is available on the NEB website and a news release announcing the release of the report or decision is also sent to media. Under the NEB Act, the Board has at most 15 months from the date an application is determined to be complete in order to make a recommendation or decision on most major facilities applications.

After the Hearing

The decision on an application can have wide-spread effects. Not only does it have an impact on the company involved, but it can also impact the communities near the project if it is allowed to proceed. This may include a period of construction activity in a community or near someone's home or farm. It could also impact jobs and the local economy.

Who is making the decision to approve or deny the application?

If the NEB finds that a project is in the Canadian public interest, it will either recommend approval of the application to GIC or will make the decision itself.

For facilities and pipelines under 40 kilometers in length that are applied for under section 58 of the NEB Act, toll applications, certain power lines, and detailed route applications, the Board will make the decision itself. If the Board approves the application, it will issue a document called an Order, which allows the company to proceed.

For pipelines longer than 40 kilometers and applied for under section 52 of the NEB Act, certain international power lines, and export licence applications, the Board will send the NEB Report with recommendations to GIC which will decide whether a Certificate or Licence should be issued by the Board.

GIC must make the final decision to approve or deny an application within three months of receiving the NEB Report. Within this three-month period, GIC may ask questions on the report or ask the Board to reconsider recommended conditions before it approves or denies the project. If GIC approves a major pipeline project, it will order the Board to issue the Certificate that allows the company to construct and operate the project. If GIC denies a project, it will order the Board to dismiss the application.

Is the decision to approve an application final?

Decisions made by the NEB may be appealed to Canada's Federal Court of Appeal on a point of law or jurisdiction if the Court grants permission (or leave) to appeal it. An appeal cannot be made simply because someone is unhappy with the outcome. An application asking for permission to appeal (known as a leave to appeal application) must be filed with the Federal Court of Appeal within 30 days following the NEB decision.

Neither major pipeline decisions made by GIC nor the NEB Report containing its recommendations are subject to appeal under the NEB Act. However, an application for judicial review of GIC's order to direct the Board to issue a Certificate or to dismiss an application can be filed with the Federal Court of Appeal within 15 days of the day GIC's order is published.

There is also the option for the NEB to review or alter its own decisions. Parties involved in the hearing can ask the Board for a review but only if specific requirements are met. These requirements are listed in the *National Energy Board Rules of Practice and Procedure*. If the NEB decides to hold a review, it may hold a hearing or ask for further input from people interested in the project.

Do I have an opportunity to provide feedback to the NEB after 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 provide constructive feedback to the NEB on the entire hearing process. Your feedback is reviewed and used to improve the NEB hearing process.

If you did not participate as an Intervenor but still want to provide feedback, you can contact the NEB and provide your thoughts. All of the various ways you can contact the NEB are listed on the back cover of this booklet.

If a project is approved, what is the NEB's role?

The NEB takes a life cycle approach to regulation. 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 to when the project is no longer needed by the company (abandonment).

If a project is approved, there will be conditions 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. The Board's Administrative Monetary Penalties (AMPs) program, allow the Board to impose fines in various situations. More information on AMPs can be found on the NEB's website.

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

You can contact the NEB if you have a concern with a project, during construction or operation. For example, potential environmental matters associated with facilities may be noticed first by landowners or those living near the facilities. If you have a concern about a project, you are encouraged to contact the company to discuss the concern first but at any time, you can also contact the NEB who can help resolve the concern. The Board has an Issue Resolution Process in place to deal with landowner complaints and deliver Appropriate Dispute Resolution (ADR). The Issue Resolution Process provides 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, a Board member or by another neutral third party. For more information, please contact the NEB.

The NEB has various publications to help you understand other aspects of the regulatory process. All of these are available online or you can request a copy from the NEB library by referring to the contact information on the back cover of this booklet. Some titles you may be interested in are:

- National Energy Board: Landowner Guide
- Regulating Pipeline Abandonment
- Guidance for Safe Crossings of NEB-Regulated Pipelines Using Agricultural Vehicles and Mobile Equipment

Explanation of Frequently Used Terms

Here are some definitions of terms used in this document and during the NEB hearing process. These are not legal definitions.

Board or NEB	National Energy Board
Certificate	Certificate of Public Convenience and Necessity issued under section 52 or 58.16 of the <i>National Energy Board Act</i> .
e-file	Filing documents electronically with the Board
evidence	Reports, statements, photographs, and other material or information that parties to the hearing submit as part of the record. Evidence is used to support a parties' position on the application.
file	Formally submitting documents to the Board
final argument	A Party's position on the recommendations and decisions the Board should or should not make and the reasons why the evidence supports that position.
GIC	Governor in Council – the Governor General acting on the advice of Federal Cabinet
hearing	A public process the Board uses to gather and test all information on the record so it can make fair and transparent recommendations or decisions. The hearing includes a written portion and may include an oral portion.
information request	A written question submitted to a Party asking something about their evidence or position.
Intervenor	A person to whom the Board has granted broad participation rights and obligations (typically including the right to submit evidence, ask questions and submit final argument).
List of Issues	The list of subjects or topics the Board will consider in the hearing.
NEB Act	National Energy Board Act
non-hearing	Used to describe the process the Board uses to assess applications for which no hearing takes place.
oral portion	When a hearing involves an oral portion, it is called an oral hearing. The oral portion of the hearing may involve questions on evidence that are spoken instead of written or may involve sharing views on the project orally during argument or statements.

Order	A document that contains the Board's decision and any directions, terms or conditions. For example, the NEB issues an Order under section 58 of the NEB Act to approve small projects that do not require GIC approval. Orders are also used for many non-facility applications.
Participant	A person whose application to participate has been allowed by the Board.
Parties	Participants in the hearing who have rights and obligations that others do not (usually the company and the Intervenor on the List of Parties).
Process Advisors	Board staff assigned to provide assistance to the public, landowners, Aboriginal groups, and Parties, and to help them understand the process, the different roles, and how to participate in the hearing.
Project	The company's proposed project found in its application or defined by the NEB in the Hearing Order.
public registry	An online repository for the evidence filed in the hearing. It reflects the majority of record of the proceeding and is available to the public. Some information is too large (for example, large maps or diagrams) and cannot be filed electronically, but is publically available in hard copy. In exceptional circumstances, the Board may decide that certain information can be filed confidentially. This information is not found in the online public registry.
record	All of the relevant submissions made in the hearing. The Board will make its recommendations and decisions based on the information that is on the record.
Regulatory Officers	Board staff assigned to assist Parties, manage documentation before, during and after the hearing, arrange logistics for the hearing, perform court clerk duties at the hearing and manage the post-hearing process.
reply evidence	Additional information the company may file in response to evidence filed by other hearing participants.
Report	A Report issued by the Board that sets out the recommendations on whether a proposed major pipeline should be approved by GIC, and possible terms and conditions.
serve	Officially providing a document to another Party. Usually a notice that the document is available on the public registry is provided electronically (by e-mail) but the document may need to be provided to a Party by mail or fax.

How can I contact the NEB?

Mailing Address:

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

Website: www.neb-one.gc.ca
Email: info@neb-one.gc.ca
Telephone: 403-292-4800
Toll Free telephone: 1-800-899-1265
Fax: 403 292-5503
Toll Free Fax: 1-877-288-8803

NEB Library

The NEB Library is an excellent source of public information on energy issues or NEB matters. You can request publication by:

- Mailing a request to NEB Library at the mailing address above
- Visiting the NEB Library located on the ground floor
- Telephone: 403-299-3562 or toll free: 1-800-899-1265
- Fax: 403-292-5576
- E-mail: publications@neb-one.gc.ca

If you are involved in a hearing, the Process Advisor's contact information for your hearing is listed in the Hearing Order.

