

National Energy  
Board



Office national  
de l'énergie

# How to Participate in a Public Hearing

Canada

*The public hearing process provides interested parties the opportunity to present their views on matters to be decided by the National Energy Board. This bulletin describes the usual method for intervening at a hearing.*

## THE BOARD

The National Energy Board is an independent regulatory tribunal that was created by the Parliament of Canada in 1959. Its powers and jurisdiction are based on the National Energy Board Act, the Canada Oil and Gas Operations Act and certain provisions of the Canada Petroleum Resources Act. The purpose of the Board is to make decisions that are fair, objective, and respected. The Board achieves this purpose by regulating in the Canadian public interest certain areas of the oil, gas, and electric utility industries. Copies of the Acts are available from the Board and from the Canada Communications Group, Public Works and Government Services Canada, 45 Sacré-Coeur Blvd., Hull, Quebec, K1A 0S7.

## PUBLICATIONS

This information bulletin is one of a series that the Board publishes on its activities and procedures. Comments on this bulletin or suggestions for future topics are welcome. These bulletins provide general information only. For details of particular items, reference must be made to the relevant legislation.

## BULLETINS IN THIS SERIES

1. Pipeline Route Approval Procedures
2. The Public Hearing Process
3. Non-Hearing Procedures
4. How to Participate in a Public Hearing
5. The Board's Publications
6. The Regulation of Tolls and Tariffs
7. The National Energy Board Library
8. Electric Power: A Compendium of Terms
9. Protection of the Environment
10. Pipeline Tolls and Tariffs: A Compendium of Terms
11. The Frontier Information Office
12. Pipeline Safety
13. Pipeline Regulation: An Overview for Landowners and Tenants

© Her Majesty the Queen in Right of Canada 1996 as represented by the National Energy Board

Cat No. NE 12-3/4E  
ISSN 0825-0170

This information bulletin is published separately in both official languages.

For further information, please contact:

Communications Group  
National Energy Board  
444 Seventh Avenue S.W.  
Calgary, Alberta T2P 0X8  
(403) 292-4800  
Fax: (403) 292-5503

© Sa Majesté la Reine du Chef du Canada 1996 représentée par l'Office national de l'énergie

No du cat. NE 12-3/4F  
ISSN 0825-0189

Ce bulletin est publié séparément dans les deux langues officielles.

Pour de plus amples renseignements, contactez :

Groupe des Communications  
Office national de l'énergie  
444, Septième Avenue S.-O.  
Calgary (Alberta) T2P 0X8  
(403) 292-4800  
Télécopieur: (403) 292-5503

---

---

## How to Participate in a Public Hearing

### Introduction

Before the National Energy Board (NEB) makes a decision on a major application, a public hearing is normally held. This allows the applicant and interested parties the chance to express their opinions for consideration by the Board. This bulletin describes how to get involved in the hearing process and the different types of documents and procedures used.

Prospective intervenors should also read Information Bulletin No. 2 — The Public Hearing Process — and consult the *NEB Act* and the *Rules of Practice and Procedure*.

### Notice of a Hearing

To provide the earliest possible notice, the Board issues a news release when it receives a major application. All applications are also listed in the Board's quarterly *Regulatory Agenda*.

When the decision to hold a public hearing is made, a hearing notice is issued. It is published in the newspapers which have the largest circulation in the areas most affected by the application, as well as in the *Canada Gazette*.

The notice outlines the subject of the hearing, where and when it will be held and how a copy of the Hearing Order can be obtained. The order sets out the procedures the Board will follow, including the steps to be followed by intervenors. (See Appendix I for a sample hearing notice.)

### The Intervention Process

Persons potentially affected by an application have the right to participate, either in full or in part, in the public hearing.

The first step is to file a written intervention with the Secretary of the Board and serve it on the applicant by the deadline stated in the hearing notice. (See section on Written Intervention.)

The Board decides if an intervention is relevant to the proceedings. Those recognized as intervenors may participate in the hearing. Intervenors may present

evidence, conduct cross-examination and make closing arguments.

Intervenors may include representatives of regulated companies, electrical and gas utilities, consumer and trade associations, various industries, governments, interest groups and affected individuals. Those who do not wish to intervene and participate in the hearing have the option to file a letter of comment with the Board.

### The Legislation

Before filing an intervention, it is important to understand the parts of the *National Energy Board Act* which deal with particular types of hearings. A review of relevant sections of the Act will explain the powers and jurisdiction of the NEB:

Other documents to be consulted are the *NEB Rules of Practice and Procedure* and, for export hearings, the *NEB Part VI Regulations*.

<b>Parts of NEB Act</b>	<b>Subject</b>
Part II	The Board's advisory functions.
Part III	Authorization of the construction and operation of pipeline and power line facilities.
Part IV	Pipeline tolls and tariffs.
Part V	Rights and powers of pipeline companies including those for the expropriation of land for the rights-of-way of pipelines and power lines.
Part VI	Licensing of exports and imports of natural gas and exports of oil and electricity.

### Legal Counsel

Because of the complexity of legislation involved and the quasi-judicial nature of NEB hearings, intervenors may wish to be represented by legal counsel. However, it is not required that any party appearing before the Board be represented by legal counsel.

## **The Written Intervention**

A written intervention must contain specific information. If any information is missing, there is a risk that the Board will not recognize a prospective intervenor and he or she will not be able to participate in the hearing.

An intervention must:

1. state clearly a person's intention to appear or not appear at the public hearing;
2. state the name, mailing address, street address, telephone number, any telecommunication numbers of the intervenor or his or her authorized agent;
3. describe the writer's interest in the application (See section on Challenges);
4. clearly state the issue(s) the writer intends to address at the hearing or, if the individual does not plan to attend, state the reason why an intervention is required;
5. indicate which official language the writer will use at the hearing;
6. quote the hearing order number and Board file number and give a short description of the proceedings (eg. XYZ Company, 1994 Toll Application).

If a prospective intervenor has not received a copy of the application or does not have enough time before the intervention deadline to study it thoroughly, an intervention should be filed but may exclude the information required from point 4. The intervenor normally has 15 days after receiving a copy of the application or after filing an intervention (which ever is later), to file a supplement providing this information to the Board.

## **Letters of Comment**

A letter of comment may be filed in lieu of a written intervention in order to express an opinion on a matter before the Board. It must describe why the person is interested in the application, indicate the person's views

on the application and include any information which supports his or her views. Copies of the letter should be sent to the Board and the applicant, if any. The Board will send a copy of the letter of comment to all other parties. Persons filing letters of comment are not entitled to participate in the hearing and should expect no further correspondence from the Board or any of the parties involved, other than responses to the letter of comment.

A letter of comment will be taken into consideration in the Board's proceedings. It should be noted, however, that a letter of comment is not sworn evidence and is not subject to cross-examination. Depending on circumstances, it may not be given the same weight as other evidence in the proceeding.

## **Extent of Participation**

An intervenor may only have an interest in one or two aspects of an application. Accordingly, an intervenor has the option to limit his or her intervention to those areas.

However, it is recommended that all intervenors make an appearance at the commencement of the hearing, even if they do not wish to be extensively involved in the process, in order to register their presence and ensure that no new matters will be dealt with.

## **Challenges**

As a general principle, the Board seeks to hear the views of all parties, representing individual or public-interest concerns, with a demonstrable interest in the subject matter of the hearing. Nevertheless, the applicant or any other party or even the Board itself may challenge an intervenor before or at the hearing to demonstrate a real interest in the proceedings. If a prospective intervenor cannot demonstrate that he or she would be affected by the outcome of the hearing to the satisfaction of the Board, the Board may refuse to accept the intervention. A prospective intervenor should be ready to answer such a challenge.

## **Pre-filed Material**

### **I. Information Requests**

#### **a. The Board**

The information required for various types of applications is detailed in the different rules, regulations and guidelines of the National Energy Board. If any of this information is missing or needs elaboration, the Board will issue a letter requesting the information.

All requests and their responses are considered part of the application. Therefore, the Board requires the applicant to provide copies of them to all other parties involved in the hearing. The Board may also issue a letter requesting information of any intervenor.

#### **b. Parties**

Any intervenor may request additional information from the applicant or any other party involved by writing directly to them in accordance with the procedures set out in the hearing order. The request and response should then be filed as exhibits at the hearing. (The hearing order provides specific filing instructions.) The applicant may also request information from an intervenor.

If a response to an information request is not received, a party may bring a motion before the Board to require that the information be provided.

### **2. Written Direct Evidence**

The Board usually requires direct evidence (i.e. testimony or evidence-in-chief) to be presented in a written form prior to the hearing in order to save time and to allow everyone to be properly prepared for the hearing. If so, copies must be provided to the Board and all other parties involved in the hearing by following the instructions outlined in the hearing order.

#### **Filing and Service Requirements**

The hearing order also states the number of copies of each document that must be submitted to the Board

and the deadlines for submitting them. A copy of the documents must also be furnished to the other parties involved in a hearing. For this reason, the Board publishes a list of the names and addresses of all the parties shortly after the intervention deadline.

Occasionally, the Board will require an affidavit to be filed with the Board's Secretary proving a document was distributed. An affidavit is a written statement, confirmed by a sworn oath before a commissioner, notary, or lawyer, which can be entered as evidence.

All documents filed with the Board should be addressed to the Secretary. If the hearing is in session, they may be filed as exhibits after receiving permission from the Board's hearing panel. If accepted, the documents are given to the hearing process officer (i.e. the court clerk). Copies should also be distributed to the other parties at the hearing.

Either the applicant or an intervenor may apply to the Board for relief from certain service requirements specified in a hearing order, where such service cannot realistically be carried out or where it is too burdensome.

#### **Motions**

A motion is any formal request that requires a ruling from the Board. Examples include:

- ordering another party to respond to an information request;
- requesting relief from certain procedural and service requirements;
- requesting an adjournment.

Like all other documents, copies of a written notice of motion and supporting affidavit must be filed with the Board, as well as with the other parties involved. Once filed, the Board will set the procedure for dealing with the motion. Usually, it is disposed of in writing. If a motion is made immediately prior to the commencement of the hearing or orally during a hearing, the Board may rule on it from the bench.

## Hearing Documents

All filed documents and those issued by the Board become exhibits at the hearing. All exhibits are available for viewing in the Board's library.

Transcripts of the proceedings can be viewed in the Board's library. Copies can be purchased from the court reporting company.

## Expert Witnesses

Many parties appearing before the Board make extensive use of expert witnesses who are called upon for their scientific or professional knowledge and experience. Such a witness may have a background in engineering, geology, accounting, economics, environmental studies or other technical fields, depending on the nature of the case. Applicants generally present expert witnesses to testify in support of their case.

Experts can also assist an applicant or intervenor in preparing a case by providing professional advice on the matters involved.

## Subpoenas

A subpoena is a written command, issued by a court, ordering a person to appear before it. Under Section 11 of the *NEB Act*, the Board, as a court of record, has the authority to issue subpoenas.

A party involved at a hearing may use the subpoena process to compel an unwilling witness to testify at the hearing. However, the party must compensate the subpoenaed witness for all reasonable expenses incurred in attending the hearing.

## Contacts with the Board

The hearing order provides the name of the contact person at the Board to whom procedural questions may be addressed. Anyone needing advice is encouraged to talk to this person. If the designated contact person is unavailable, Board counsel will be available for consultation.

## The Hearing

Oral hearings are usually similar to the process followed in a Canadian courtroom. This structure and formality

ensure each party is treated fairly. The participants may present evidence, conduct cross-examination and deliver final arguments. However, parties must not mix evidence and argument.

The procedures followed are set out in a number of documents including the hearing order, various memoranda of guidance and the *Rules of Practice and Procedure*.

A step-by-step summary of the hearing process is given in Appendix 2.

## Evidence

Evidence is classified as any oral or written testimony from a witness to establish facts. It is usually given under oath. Any questioning done by the party who presents the witness is called the Examination-In-Chief. Documents can also be used as evidence by filing them as exhibits.

## Cross-examination

Cross-examination is the questioning of another party's witness. Every party at a hearing has the opportunity to question the other parties' witnesses. Cross-examination is considered an important element by the Board because it helps ensure a complete and accurate record on which to base a decision.

## Argument

Argument is the final stage of the hearing. The applicant and intervenors state their views on the issues discussed at the hearing. The basic difference between evidence and argument is that evidence presents facts and argument presents conclusions based on the evidence.

## Intervenors' Costs

In general, parties making representations at a hearing before the Board must do so at their own expense. The Board does not have the authority to award costs against an applicant, with one exception under Section 39 of the *NEB Act*. The exception involves **only** hearings on the **detailed routing** of a pipeline. (See Information Bulletin No. 1, Pipeline Route Approval Procedures.) When this detailed route is opposed by landowners who are directly or indirectly affected by it, the Board

has the authority to award landowners reasonable costs of participating in the hearings. These costs are paid by the company that intends to build the line.

### **The Record**

The decision of the Board arising from a public hearing is based on the record of the proceeding. The record consists of the application, interventions, written evidence, responses to information requests, exhibits, hearing transcripts, submissions and argument of the parties, related orders and past decisions of the Board, correspondence, as well as any other material filed in the proceeding, including letters of comment.

Once the hearing has been completed, the record of the proceeding is closed. As a general rule, no further submissions are accepted. Therefore, an intervenor must ensure that his or her views are made known before the close of the hearing, so that they may be considered in the Board's deliberations.

The record of a proceeding may be examined in the Board's library.

### **Summary of the Intervention Process**

**Step #1** – Familiarize yourself with the National Energy Board and its procedures. Understand the process you are getting involved in and the type of hearing taking place.

**Step #2** – Decide whether or not to hire a lawyer to represent you.

**Step #3** – File a written intervention with the Board prior to the deadline set out in the hearing order.

**Step #4** – Decide whether or not to obtain an expert witness to testify on your behalf.

**Step #5** – Make any necessary information requests of the applicant or other parties involved, remembering that the better prepared a case, the more weight it carries.

**Step #6** – If required by the hearing order, written direct evidence including the examination-in-chief should be pre-filed with the Board.

**Step #7** – Familiarize yourself with the hearing process.

**APPENDIX I**

**National Energy Board  
Hearing Order GH-0-93  
Notice of Public Hearing**
**XYZ Pipeline Company Limited  
1994 Expansion Project**

The National Energy Board ("the Board") will conduct a public hearing to consider an application dated 24 June 1993 by XYZ Pipeline Company Limited ("the Applicant" or "XYZ"), pursuant to section 52 of the *National Energy Board Act* ("the Act"), for a certificate of public convenience and necessity authorizing an expansion of its pipeline system in Saskatchewan, Manitoba and Ontario. The installation of additional facilities, estimated to cost \$300 million, will increase the capacity of the pipeline and allow XYZ to satisfy forecasted requirements. The expansion project would involve constructing 700 kilometres of 406 mm (16-inch) diameter pipeline and installing 10 new pump units.

The hearing will commence at 1:00 p.m. on Monday 22 November 1993 in the National Energy Board Hearing Room, Third Floor, 311 - Sixth Avenue S.W. Calgary, Alberta T2P 3H2.

The hearing will be public and will be held to obtain the evidence and views of interested parties on the application.

Any person wishing to intervene in the hearing must file a written intervention with the Secretary of the Board and serve a copy on the Applicant at the following address:

Mr. Joseph P. Smith  
General Counsel, Regulatory  
XYZ Pipeline Company Limited  
1234 - 10th Avenue  
Regina, Saskatchewan  
Telephone: (306) 555-1111  
Facsimile: (306) 555-2222

The Applicant will provide a copy of the application to each intervenor. The deadline for receipt of written interventions is 22 September 1993. The Secretary will issue a list of parties shortly thereafter.

Any person wishing only to comment on the application should file a letter of comment with the Secretary of the Board and send a copy to the Applicant by 26 October 1993.

The Board will also conduct an initial assessment, pursuant to the Environmental Assessment and Review Process Guidelines Order, of the potential environmental effects of the proposal and the social effects directly related to those environmental effects. The deadline for receipt by the Board and all parties of written comments to be used in this assessment is 26 October 1993.

Information on the procedures for this hearing (Hearing Order GH-0-93) or the *NEB Rules of Practice and Procedure* governing all hearings (both documents are available in English and French) may be obtained by writing to the Secretary or telephoning the Board's Regulatory Support Office at (403) 292-4800.

J.S. Richardson  
Secretary  
National Energy Board  
311 - Sixth Avenue S.W.  
Calgary, Alberta  
T2P 3H2  
Facsimile: (403) 292-5503



**APPENDIX 2****Step-by-Step Summary of the Hearing Process**

The following is a summary of the steps involved in a typical public hearing conducted by the Board.

**The Preparation for the Hearing**

1. A company files its application with the Secretary of the Board. The Board issues a news release to announce the filing.
2. Prior to issuing a hearing order, the Board examines the application to determine whether it is sufficiently complete to set a hearing date. The Board may issue letters requesting information to clarify certain points or to obtain further information (Note: intervenors are permitted to do likewise after they officially become participants in the proceeding.)
3. When all required information has been received, the Board issues a hearing order. It contains directions on procedure, including a date and location for the hearing. It provides the deadlines for the filing of interventions, letters of comment and evidence by the applicant and intervenors. The order also directs the applicant to publish a notice of hearing in certain specified newspapers and to serve a copy of the application and hearing order on certain parties. In most cases, the order also provides a list of issues to be considered at the hearing. The Board issues a news release simultaneously with the hearing order.
4. Intervenors file their written interventions with the Board and serve them on the applicant by the time limit specified in the hearing order. Intervenors may suggest additional issues to be considered at the hearing.
5. The Board issues a list of all intervenors and their addresses to everyone involved.
6. The applicant serves its application on each intervenor.

7. Intervenors serve their interventions on all other parties.
8. The applicant provides the Board and intervenors with copies of its written direct evidence by the time limit specified in the hearing order.
9. Information requests may be made of the applicant by the intervenors, and the applicant must reply.
10. Subsequently, intervenors provide the Board, the applicant, and all other interested parties with copies of their written direct evidence.
11. Letters of Comment are filed with the Board and served on the applicant.
12. The Board serves the letters of comment on all other parties.
13. Information requests may be made of the intervenors by the applicant and other parties to the proceeding, and the intervenors must reply.
14. Throughout, the Board can issue information requests to the applicant or to the intervenors.

**The Hearing**

15. At the beginning of the hearing, participants obtain a pre-numbered exhibit list and the order of appearances from the hearing process officer.
16. The presiding member of the hearing panel gives an opening statement.
17. The applicant registers its appearance and enters the application, written direct evidence and all supporting documents as exhibits on the record.
18. Intervenors register their appearances, according to the order of appearances established by the Board prior to the hearing, and enter their interventions, written direct evidence and any supporting documents as exhibits on the record.
19. The Board deals with any preliminary matters or motions.

20. The applicant presents its direct evidence (examination-in-chief). The evidence is usually divided into separate subject matters with a panel of expert witnesses addressing each subject area. All witnesses are sworn or affirmed.
21. Intervenors cross-examine the applicant's witnesses according to the order of appearances.
22. Board counsel examines the applicant's witnesses. The members of the Board on the hearing panel may ask questions of the witnesses at any time.
23. The applicant's counsel may then re-examine the witnesses.
24. Intervenors present their direct evidence according to the order of appearances.
25. The applicant and other intervenors cross-examine the intervenors' witnesses.
26. Board counsel and Board Members may ask questions of the intervenor's witnesses.
27. The intervenor may then re-examine his or her witness.
28. The applicant may present reply evidence pertaining to new matters raised in cross-examination.
29. The applicant presents its argument.
30. Intervenors present their arguments according to the order of appearances.
31. The applicant presents its reply argument.
32. The hearing concludes and the record of the proceeding closes. The Board considers no further submissions regarding the application once the record is closed.

### **The Decision**

33. The Board makes its decision and prepares its Reasons for Decision.
34. The Board releases the Reasons for Decision to the applicant, all interested parties in the proceedings, and persons on the Board's mailing list. The Reasons for Decision may be issued before or after any required approvals by the Governor in Council, depending upon the particular requirements of legislation. In addition, the Board issues a news release outlining its decision.