

National Energy Board



Office national de l'énergie

Electricity Exports

Landowners' Guide

INFORMATION SERIES

Pipeline Regulation in Canada

A Guide for Landowners and the Public

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Pipeline Regulation in Canada

A Guide for Landowners and the Public

The National Energy Board is an independent federal agency established in 1959 by the Parliament of Canada to regulate international and interprovincial aspects of the oil, gas and electric utility industries. The purpose of the NEB is to promote safety, environmental protection and economic efficiency in the Canadian public interest within the mandate set by Parliament in the regulation of pipelines, energy development and trade.

Individual Canadians play an important role in NEB processes. The NEB wants to hear from people with an interest in a project before making a decision about a company's proposal. The Board wants to feel confident that every point of view has been heard so that its regulatory decision strikes the right balance among all the interests.

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as represented by the National Energy Board

Cat. No. NE23-104/2002E
ISBN 0-662-32151-0

This report is published separately in both official
languages.

Copies are available on request from:
National Energy Board
Publications Office
444 Seventh Avenue SW
Calgary, Alberta
T2P 0X8
(403) 299-3562
1-800-899-1265

For pick-up at the NEB office:
Library
Ground Floor

Web site: www.neb-one.gc.ca

Printed in Canada

© Sa Majesté la Reine du Chef du Canada 2003
représentée par l'Office national de l'énergie

N° de cat. NE23-104/2002F
ISBN 0-662-87162-6

Ce rapport est publié séparément dans les deux
langues officielles.

Demandes d'exemplaires :
Office national de l'énergie
Bureau des publications
444, Septième Avenue S.-O.
Calgary (Alberta)
T2P 0X8
(403) 299-3562
1-800-899-1265

Des exemplaires sont également disponibles
à la bibliothèque de l'Office
(rez-de-chaussée).

Site web : www.neb-one.gc.ca

Imprimé au Canada

Foreword

> **Pipelines, the National Energy Board, and You...**

Pipelines are probably one of the transportation methods Canadians think about the least. After all, pipelines are buried in the ground. We're never really aware of how they move oil, gas, and other commodities such as carbon dioxide.

Pipelines deliver energy to heat our homes, and they provide energy sources for electrical generation and fuel for our vehicles and transportation industries. Pipelines also deliver oil and gas to distant markets.

> **The National Energy Board's role...**

The potential benefits of a pipeline have to be balanced against safety issues, concerns for the environment and other public interest¹ issues. That's where the National Energy Board (NEB or Board) comes in. The NEB is an independent federal tribunal that was established in 1959 by the Government of Canada to regulate pipelines that cross provincial or international borders. The NEB regulates many aspects of Canada's energy industry, including the construction, operation, and maintenance of pipelines that carry oil, natural gas, and commodities. A pipeline company must apply to, and receive approval from the NEB before it can build a pipeline, make changes to it, sell it, or abandon it.

> **Your role...**

Canadians play an important role in pipeline development. When a company decides it wants to build a pipeline, it must apply for approval from the NEB. The NEB wants to hear from people who could be affected by a pipeline before making a decision about a company's application for approval. Some people may be in favour of the pipeline, others may be against it, and some people may be uncertain of what the presence of the pipeline might mean to them. It is important all of these points of view are heard so that the Board's regulatory decision strikes the right balance among all interests.

The NEB is also interested in hearing about any concerns you may have with the construction and operation of an approved pipeline. If you would like to contact the NEB, call our toll-free number at 1-800-899-1265. You can also write to us, or visit our library at this address:

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

You may also visit our Web site at www.neb-one.gc.ca where you can learn more about the NEB and its activities and even listen to a hearing while it is taking place. You may also access 'Regulatory Documents' on our Web site, which includes hearing orders, and hearing transcripts.

¹ The public interest is inclusive of all Canadians and refers to a balance of economic, environmental and social interests that changes as society's values and preferences evolve over time. As a regulator, the Board must estimate the overall public good a project may create against its potential negative aspects, weigh its various impacts, and make a decision.

Introduction

You've heard that a company plans to build a pipeline nearby and you are unsure of how the pipeline may affect you or your community. Questions you may have could include:

- Where will the pipeline be located?
- Will it be safe?
- What kind of pipeline will it be?
- What will flow through the line?
- How will the pipeline affect me?
- How do I get involved in the planning process?
- What are my rights?
- Will I be compensated?

The National Energy Board has produced this guide to help you get answers to these and other questions. We hope it will help you to understand the regulatory process that pipeline projects must go through before they can be built. It describes the NEB's role in regulating a pipeline over its entire life cycle - from the early planning and design stages through to abandonment.

For those interested in participating in the decision-making process for a pipeline project, this guide will serve as a reference. Sections of this guide are arranged to reflect the "life cycle of a pipeline" so that you can easily follow each step of the process.

Table of contents

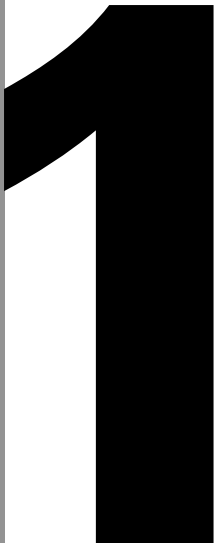
| | | |
|-----------------|--|-----------|
| >> | Planning, design and the regulatory process | 6 |
| | 1. Planning and designing a pipeline | |
| | 2. Negotiations for land and land rights | |
| | 3. The regulatory process | |
| | 4. Public hearings | |
| | 5. Certificate hearings | |
| | 6. Detailed route of a pipeline | |
| | 7. Right of entry onto land | |
| | 8. Compensation for land use | |
| | 9. Approval conditions and NEB inspections | |
| | | |
| >> | Construction and operation | 56 |
| | 10. Construction and reclamation | |
| | 11. Operating and maintaining the pipeline | |
| | | |
| >> | Abandonment | 68 |
| | | |
| >> | Non-hearing applications | 72 |
| | | |
| >> | For more information | 74 |
| | | |
| >> | Appendices | 76 |
| | Appendix A - Application for intervenor status | |
| | Appendix B - The oral hearing process | |
| | Appendix C - Environmental policy | |
| | Appendix D - Provincial regulators | |
| | Appendix E - Provincial one-call centres | |



Extent of authority

The NEB has jurisdiction over the following matters:

- The construction and operation of pipelines that cross provincial or international borders.
- The tolls and tariffs of interprovincial and international pipelines.
- The construction and operation of international power lines.
- The exports of oil and electricity.
- The exports and imports of natural gas.
- The exploration and development of oil and gas resources in Canadian offshore and northern areas.



Planning and designing a pipeline

The life cycle of a pipeline begins when a company sees an opportunity to supply a market with commodities such as oil and gas. Pipelines are commonly used to transport these products to new or existing markets and quite often these pipelines need to extend beyond provincial and international borders.

If a company plans to construct a pipeline that will cross provincial or international borders, they must get approval for the project from the NEB. A company wanting to build a pipeline must talk to government agencies, people living near the proposed pipeline, aboriginal persons or others who might have an interest in the project such as community associations and environmental groups. If people have ideas to suggest, the company should consider these suggestions when planning and designing the pipeline.

> **When does the NEB become involved ?**

To submit an application, the company must follow the *National Energy Board Act* (NEB Act), the *National Energy Board Rules of Practice and Procedure, 1995*, and the *National Energy Board Guidelines for Filing Requirements* (the Guidelines). Once the application has been submitted and filed, the NEB becomes directly involved with the project as the application is now a formal request for approval.

> **How will I find out about the project?**

For most pipeline projects, the NEB requires the company to carry out an Early Public Notification (EPN) program. However, it is up to the company to decide how it notifies you,² and how it will involve you in the planned project. The company might put an advertisement in your local newspaper, send you a letter or a newsletter in the mail, invite you to a public meeting, or even come to your door with a personal notice. The purpose of the EPN program is to ensure that early in the process, the company informs the public about its proposed pipeline project and listens and responds to their comments. When the company files its application, it must show that it has taken into consideration the public's concerns about the proposed pipeline.

² Part II of the NEB *Guidelines for Filing Requirements* sets out the Early Public Notification information required to be filed by a company for a certificate, an order or a permit issued by the NEB. See Sections 52, 58, 58.11 and 58.16 of the NEB Act.

The extent of the EPN program depends on the size of the project, the project's potential effects, and the level of public concern. An EPN program may not be required if the company shows that:

- an equivalent program has been carried out;
- any potentially adverse environmental or socio-economic effects of the project are insignificant; or
- the facilities application is related to:
 - i) work which will occur on the company's land or lease;³
 - ii) acquisitions required to support day to day pipeline operations; or
 - iii) work required for contingency projects such as emergency repairs.

> **What should I expect when I participate in the company's EPN program?**

As a participant in a company's EPN program, you should expect to:

- be told about the details of the project;
- have an opportunity to provide your views on the overall project;
- have the company respond to your concerns to the best of its ability; and
- receive the Board's contact information, and documentation about Board procedures.

Whether you are interested in the project because you are a landowner, a tenant, a concerned individual, or a member of a public group, we encourage you to participate in the company's EPN program. It will help you get a better understanding of the project and of your rights as an interested party. One of the goals of an EPN program is to resolve as many issues and concerns as possible before the company files its application with the NEB, or before the NEB conducts a public hearing (if one is required).

>> **EPN PROGRAM:**

a program, most often a requirement of the application process, where the company informs the public about a proposed project.

³ As per the *Guidelines for Filing Requirements* exceptions include facilities or activities that: (A) relate to an increase in the storage or disposal of toxic substances, (B) could result in increased noise emissions, (C) could result in increased emissions of air contaminants, or (D) will result in local nuisance potential, including the potential for increased noise or traffic.

> **Does the company have the right to survey my land, or enter my land for field studies without my consent?**

The NEB Act allows a pipeline company to enter land to survey the proposed location of a pipeline or to conduct field studies, examinations and other work that is necessary to determine the location of a pipeline.⁴ For example, if the company knows that there are sensitive land features in the area where it wants to build its pipeline, it may decide to conduct field studies to see what it could do to protect the land features, or if it should avoid the area altogether.

If there is damage to the property as a result of the survey, field study or examination, the company is required to compensate the landowner. For more information about compensation, please refer to section 8.

> **If I raise a concern with the company about the pipeline route or about the possible effects of the pipeline, what is the company's responsibility to me?**

During the EPN process, the NEB expects the company to respond to the best of its ability to any reasonable concerns that you or other people have. Document your concerns and forward them to the company. Also, let the company know if you have suggestions as to how a concern could be resolved. You may also consider contacting other experts to help you with a solution; however, the cost of these experts is at your own expense.

> **How do I know if the NEB can deal with my concern?**

You may contact the NEB by calling 1-800-899-1265. We will help you to determine if we can appropriately address your concern and can provide you with information about the regulatory process.

While we may be able to help you with many of your concerns, some concerns may be outside of the Board's jurisdiction. For example, the NEB cannot decide matters related to compensation for the use of land, or for damage that may occur from pipeline construction, operation or maintenance. In addition, the NEB cannot decide matters related to pipelines or other facilities that are provincially regulated.

⁴ Section 73 of the NEB Act states that "subject to this Act, a company may, for the purposes of its undertaking... enter into and on any Crown land... [and] into or on the land of any person, lying in the intended route of its pipeline, and make surveys, examinations or other necessary arrangements for fixing the site of the pipeline".

2



The NEB Act also governs a company's actions when they start negotiating with landowners and tenants for the land rights it would need to build and operate the pipeline. These negotiations may take place even before a company submits its application to the NEB.



Negotiations for land and land **rights**

When the company works on its pipeline plan and design, it needs to make decisions about how and where to build the pipeline. Things such as natural land features, soil type, environmentally sensitive areas and the location of houses, roads or other facilities will have an influence on the actual route of the pipeline. The company needs to conduct surveys, land studies and other related work. When this work is complete, the company will choose a route for the pipeline and will negotiate with the landowner to get the land rights it needs to build the pipeline through the property. There are many types of land rights for pipelines since they relate to the different ways the company uses land during pipeline construction and operation.

> **What is an option agreement?**

Because the company plans the general route before it files its application with the NEB, the company may begin to negotiate with a landowner at anytime even though the landowner may not be affected when the final route is determined. This means that the company may first want to negotiate an option agreement with you. This agreement gives the company the assurance that it can obtain the land rights it needs if the project goes ahead. An option agreement is a written contract. When you sign it, you are promising the company that you will sign an easement agreement at a later time.

Usually, an option agreement is in effect for a specific period of time. If the specified period of time passes without the company exercising the option, the option agreement will no longer be valid. However, if the option is exercised within the time specified, the terms of the option agreement will come into effect. This means that the company is granted an easement agreement automatically, according to the terms you and the company agreed to in the option agreement.

The option agreement is a legal contract. It contains certain required sections or clauses that cover various rights, but you can also negotiate other terms to meet your particular needs. Before you sign this agreement, it is important to read and understand all of the terms and conditions carefully. You may wish to seek legal advice before signing the agreement.

> **What is an easement agreement?**

The easement agreement is the most common agreement that a company will acquire for the right to use the land for the pipeline. It is a written contract that sets out the rights of the company and the rights of the landowner.

While the company may present a standard easement agreement, the final form and its contents are a matter of negotiation. However, the form of the easement agreement would be finalized if an option agreement is already

in place. The company has the right to use the land to build, operate, and maintain the pipeline once they decide to exercise the option agreement. When the company signs an easement agreement with you, it is legally required under provincial law to register the agreement with the local land titles or registry office. Any future owners of the land must also follow the conditions contained in the easement agreement. Until the company removes the easement from the land titles, the land remains subject to the easement agreement.

» EASEMENT AGREEMENT

A written contract that sets out the rights of the company and the rights of the landowner.

The agreement will usually cover things such as:

- *the land that will be subject to the easement;*
- *the size and location of the right of way;*
- *indemnity (protection from liabilities, damages, etc. caused by the company);*
- *how the land will be used;*
- *terms of compensation payment (lump sum or periodic payments);*
- *the legal responsibilities of the company and the landowner; and*
- *any restrictions placed on the use of the land.*

> Will the easement agreement affect how I can use my land?

Some land uses, or activities on the land could potentially interfere with the operation of the pipeline, or threaten public safety or the environment. These land uses or activities may be restricted or prevented according to the terms of the easement agreement. For example, it is normal for the easement agreement to include a clause stating that the landowner must get permission from the company to do any digging or excavating, drilling, installing or building of any pits, wells, pipelines, foundations, pavement, buildings or other structures, across, on, along, or under the right of way. The applicable restrictions to your land will be listed in your easement agreement.

In addition, there may be other restrictions outside of the easement agreement that could affect your use of the land. These restrictions are described in Section 11, and relate to how the land around the pipeline can be used once the pipeline is operating.

RIGHT OF WAY

The right of way is the strip of land in which the pipeline is buried. The width of the right of way may vary depending on factors such as the pipeline size and slope of the land, but most right of ways will range from 15 to 30 metres (m) wide for the entire length of the pipeline.

> What are my rights under an easement or option agreement?

As a landowner, you have certain rights with respect to both easement and option agreements. These are described in Sections 86 and 87 of the NEB Act.

Section 86 of the NEB Act sets out the required clauses to be included in the easement or option agreement. These clauses include:

- review of compensation every five years for annual or periodic payments;
- review of amount of compensation every five years with respect to the amount of annual or other periodic payments that have been selected;
- compensation for all damages caused by the company;
- protection from all liabilities, claims or suits caused by the company's operations, but not from liabilities, damages, claims or suits filed as a result of the gross negligence or willful misconduct of the landowner; and
- restriction of land use to the line of pipe for which the land is specifically required, unless the landowner agrees to further use.

Before the company signs an option or easement agreement with you, it must first deliver a "Section 87 notice" to you that must describe:

- what land is needed for the part of the pipeline that will cross your property;
- how the company plans to compensate you for the land it needs;
- a statement of the value of the required land;
- the NEB's process for consideration of the detailed route of the pipeline; and
- the options of negotiation or arbitration that are available if you and the company cannot agree on compensation.

You may negotiate with the company to receive reasonable costs for having the easement or option agreement reviewed by your lawyer. However, there is no legal right under the NEB Act that entitles you to have these costs covered.

> **What other land rights might a company need?**

Additional negotiations may take place between a landowner and a pipeline company for the purchase of a portion of the land or for temporary work space. These are private agreements between the landowner and the pipeline company in which the NEB typically does not become involved.

I) **Land purchase**

A company may want to negotiate with you for the purchase of land. The company may offer to buy part of your land outright for certain above-ground parts of the pipeline project such as pump stations, compressor stations, or custody transfer stations.

II) **Temporary work space**

A company may want to negotiate with you for the use of temporary work space while it builds the pipeline. Temporary work space is usually needed when the pipeline goes under a road or a water course like a stream or river, or where extra work space is needed to store topsoil or subsoil. The company should sign an agreement with you to establish an area of temporary work space on your land. As the name suggests, the company's need for the land is temporary so the agreement negotiated with the landowner usually covers only the time period during the construction of the pipeline and reclamation of the land. The company must pay for the use of the temporary work space and must also pay for any damage to the landowner's property. When the construction work is finished, the company must reclaim the temporary work space to a condition that is reasonably similar to that of its previous state. When this reclamation work is finished and the agreement has expired, the landowner regains the use of the land.

> **What if the company does not reclaim the land according to our agreement?**

First you should talk to the company to ask them to resolve your concerns. If the company does not resolve your concerns, you may contact the NEB at 1-800-899-1265 and speak to an NEB landsperson or inspector.

> **What happens if I refuse to sign an agreement?**

The company may choose to apply to the NEB for the right to enter your land, called a right of entry order. This is discussed further in Section 7.

.....>> **Notes**

3



The NEB reviews each application to ensure that the project will meet the requirements of the NEB Act, the *Canadian Environmental Assessment Act* (CEA Act), the *National Energy Board's Rules of Practice and Procedure, 1995*, the *Guidelines for Filing Requirements* (the Guidelines) and other legislation and regulations that may be relevant.



The regulatory process

Before the company can start to clear any land or do any pipeline construction work, it must apply for, and receive approval for the project from the NEB. The application will describe:

- the purpose of the pipeline;
- the pipeline design;
- environmental impacts of the project;
- if any public consultations have been held;
- any land rights needed;
- the adequacy of supply and the market potential for the products it will carry;
- the economics of the pipeline;
- the proposed route corridor; and
- any other factors that may affect the Board's decision.

It is the responsibility of the NEB to consider all aspects of the project in order to determine if the pipeline project is in the public interest.

> **What is meant by “the public interest?”**

The public interest is inclusive of all Canadians and refers to a balance of economic, environmental and social interests that changes as society's values and preferences evolve over time. As a regulator, the Board must estimate the overall public good a project may create against its potential negative aspects, weigh its various impacts, and make a decision.

The NEB will take the public interest into account when it makes its decision concerning a pipeline application.

As well, the socio-economic and environmental implications will be taken into consideration when reviewing a project. The NEB is responsible for ensuring that, when necessary, an environmental assessment of a pipeline project is conducted in accordance with the CEA Act or the NEB Act. An environmental assessment will identify any potential impact on the environment and the measures required to minimize the impact.

> **Can you tell me more about the NEB's role in protecting the environment?**

The NEB's environmental responsibility includes ensuring that the environment is protected during planning, construction, operation and abandonment of energy projects within its jurisdiction. When making decisions, the Board will consider environmental concerns related to:

- air pollution;
- land and water pollution;
- disturbance of renewable and non-renewable resources;
- integrity of natural habitats;
- disruption of land and resource use; and
- traditional land and resource use by aboriginal persons.

Companies preparing an application are required to anticipate the environmental issues and concerns created by the proposed project and to consult with appropriate government bodies, public interest groups, aboriginal persons, and affected landowners.

If the project application is approved, the NEB audits and inspects the company's construction activities, the operation of its system, and the company's routine maintenance and monitoring procedures.

..... >> **Notes**



Public hearings may be conducted orally or through written correspondence and documents only. Both processes allow for public participation. The public hearing gives all of the people concerned with a project an opportunity to express their point of view, and possibly ask or answer questions. It also provides the Board with the information it needs to make a fair and objective decision.



In the case of a company applying to construct and operate a pipeline, two hearings may result. The first hearing is called a “certificate hearing,” and is described in greater detail in Section 5 of this guide. The second hearing is called a “detailed route hearing” and is described in greater detail in Section 6 of this guide.

> **Who decides whether to approve or deny an application?**

A panel of no fewer than three NEB Board Members hear the evidence and then make the decision to approve or deny an application. Board Members are chosen for their private and public sector experience as well as their expertise in economics, engineering, environment, finance, law, public participation, safety and science. They are supported by a staff of technical experts.

> **What is a Hearing Order?**

A Hearing Order is published once the NEB has decided that an application is essentially complete and ready to be considered at a hearing. The Hearing Order is a document that gives a brief description of the proposed pipeline project and states that an oral or written hearing will be held. In most cases, the date(s), location(s) and time(s) of the hearing will be included. If these details are not known, they will be published at a later date. The Hearing Order will include the address of the NEB and will describe how anyone who is interested may participate in the hearing. It will include the procedures to be followed and provide initial lists of issues and participants (list of parties). These lists are finalized and sent to all intervenors and companies involved once all of the interventions have been received.

The Hearing Order also contains a notice of hearing which the company must publish in the newspapers that serve the area of the proposed pipeline route. Everyone who appears on the final list of parties receives a copy of the Hearing Order as well as information and materials from the applicant company.

Although Hearing Orders generally follow this sequence, the process may change depending upon the circumstances of a particular hearing. In some instances, pre-hearing activities such as public information sessions are offered to assist the public with their participation in the hearing process.

> **What information can I expect to receive at a public information session?**

If held, a public information session is usually conducted in, or close to the communities that may have an interest in a proposed pipeline. It is an informal meeting conducted by the NEB which will assist people in preparing for participation in the public hearing by providing them with information about the process.

Public information session dates and locations are announced through news releases, newspaper and radio ads local to the area where the session is being held.

This session is not an opportunity for the public to voice their opinion on the project. If you have an opinion you would like to offer, you can apply for intervenor status. If you are granted intervenor status, you will be able to participate in the hearing process.

> **Who can be an intervenor?**

If you would like to formally participate in the hearing process, you have a time frame in which you can apply to the NEB to become an intervenor. An intervenor can be anyone who demonstrates to the Board that they have sufficient interest in the project that warrants their status as an intervenor.⁵ Intervenors may include companies, consumer and trade associations, various industry associations, governments, interest groups, landowners, and tenants. As an intervenor, you will have the right to receive all of the documents relating to the application and the hearing and the right to present evidence, cross-examine other witnesses, and give a final argument to the Board at the hearing.

HEARING ORDER

Hearing orders detail the regulatory process for a particular application and explain how the public can participate in this process.

> **What is an intervention?**

An intervention is the written request you file with the NEB to apply to become an intervenor. In your intervention, you must explain why you would like to participate in the hearing and list the specific issues you intend to address at the hearing. The NEB may or may not grant intervenor status to everyone who applies, so it is important that you support your intervention with complete and specific information. Your intervention must contain:

⁵ Section 28 of the *National Energy Board Rules of Practice and Procedure, 1995* sets out the filing requirements for any interested person who may intervene at an NEB hearing.

- a clear statement of your intention to appear or not appear in person at the hearing;
- name, mailing address, street address, telephone number, and a fax number (if applicable), for you or for the person you have authorized to act on your behalf;
- a brief description of your interest in the application for the pipeline project;
- a clear statement of the issue(s) you intend to raise at the hearing or, if you do not plan to attend, the reason why an intervention is required;
- if you plan to attend the hearing, an indication of which official language you will use; and
- the Hearing Order number and Board file number of the project which you are referring to (these can be found in the Hearing Order).

If you are interested in becoming an intervenor at a hearing, you will need to fill out an Application for Intervenor Status. The form is available at the back of this guide in Appendix A.

> **What is a letter of comment? How is it different from an intervention?**

If you do not wish to be an intervenor but still want to express your views, you have the option of filing a letter of comment⁶ with the NEB. In the letter, you should state your views about the company's application and include any facts or information that support your position. You need to send a copy of this letter to the company as well.

When you choose to submit a letter of comment, the letter:

- becomes a public document, and copies of it will be provided to all participants at the hearing;
- will give the company and other participants the opportunity to reply to it if they so choose;
- will not entitle you to receive copies of the application or any further documents or notices; and
- will not entitle you to ask questions or present argument at a hearing.

In making a decision about the company's application, a letter of comment may not carry the same weight with the NEB as the evidence you may file as an intervenor. The reason for this is that by submitting a letter of comment, the other participants do not have the opportunity to question or challenge

⁶ The *National Energy Board Rules of Practice and Procedure, 1995* set out the filing requirements for any interested person who does not wish to participate in the proceeding but who wishes to make comments to the Board regarding the proceeding.

you about the information contained in the letter. The strength of an intervenor's case is often proven by how well the information presented withstands the questioning or cross-examination by others.

> **Can I make a presentation at the hearing without being an intervenor?**

You can request to make an oral presentation to the NEB, but you will have to state that you do not wish to become a formal intervenor. The Board decides on whether to allow this kind of presentation on a case-by-case basis.

> **How should I prepare for a hearing?**

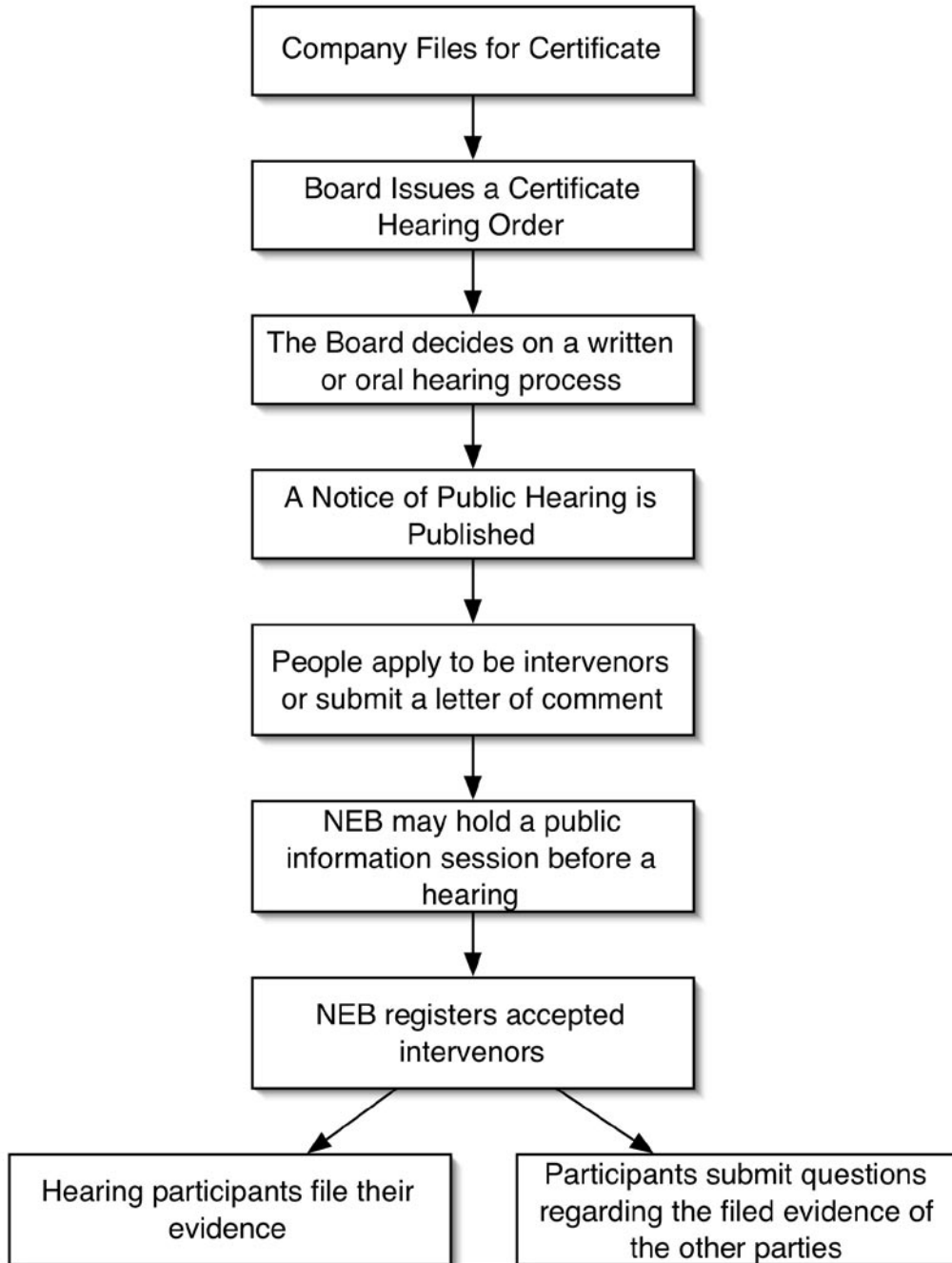
Before you appear at a hearing:

- Prepare your submission so that it is organized and as complete as possible.
- Review the details of your submission and your supporting materials and ensure that you bring these documents to the hearing.
- Be prepared to answer questions about your submission that other participants at the hearing may ask you.
- Review the information you received from the applicant or other intervenors.
- Prepare, in advance, any questions that you want to ask the applicant or other intervenors.

If you have new information that you were unable to send to the hearing participants before the hearing date, you will need to get permission from the Board if you wish to have it entered on the hearing record. If the Board allows you to enter the new information, you will need to provide copies for all hearing participants. If you need help getting copies made, please contact the NEB.

You may find it helpful to get copies of the NEB's Reasons for Decision (RFD) from previous hearings. These documents describe the issues presented by participants and the reasons for the NEB's decision on each of these issues. Reasons for Decisions are available from the NEB library or on our Web site at www.neb-one.gc.ca under 'Regulatory Documents.'

Before the hearing date **arrives**



> **Should I hire a lawyer or an expert to assist me in the hearing?**

It is your decision whether to hire a lawyer or other experts to assist you in preparing your case and/or to assist you in participating at the hearing. To help you decide, you may want to take into account how complex the issues are, your own knowledge of the issues, the amount of time you have to do the preparation, and your experience in participating in hearings or similar processes. If you are relying upon an expert's report to assist you with your case, the expert should be a witness at the hearing.

Your participation in a certificate hearing is at your own expense. However, for detailed route hearings reasonable costs incurred for participating may be covered. For more information, see Section 6.

> **How do I get more information about the project? What is an "information request"?**

Once the NEB has issued the Hearing Order, anyone who is a registered participant in the hearing can request additional information about the application from the company or from those who have filed written evidence in the hearing. The NEB can also ask for additional information from anyone involved in the hearing. This information gathering is done through written information requests⁷ and results in a more efficient use of hearing time. Put your information request in writing and send it to the person, company, or organization from whom you need information. Also send copies of your request to the Secretary of the NEB and to all other registered participants in the hearing. Your information request must be made within the time limits set by the NEB in the Hearing Order.

> **What is cross-examination?**

Cross-examination is an opportunity for participants to ask each other questions during the hearing. Questions about the evidence filed, the qualifications of experts or other information gathered at the hearing may be raised. After each participant adopts his or her evidence under oath, the company, intervenors, NEB lawyers, NEB panel members, and other participants may ask that person questions.

> **What is evidence?**

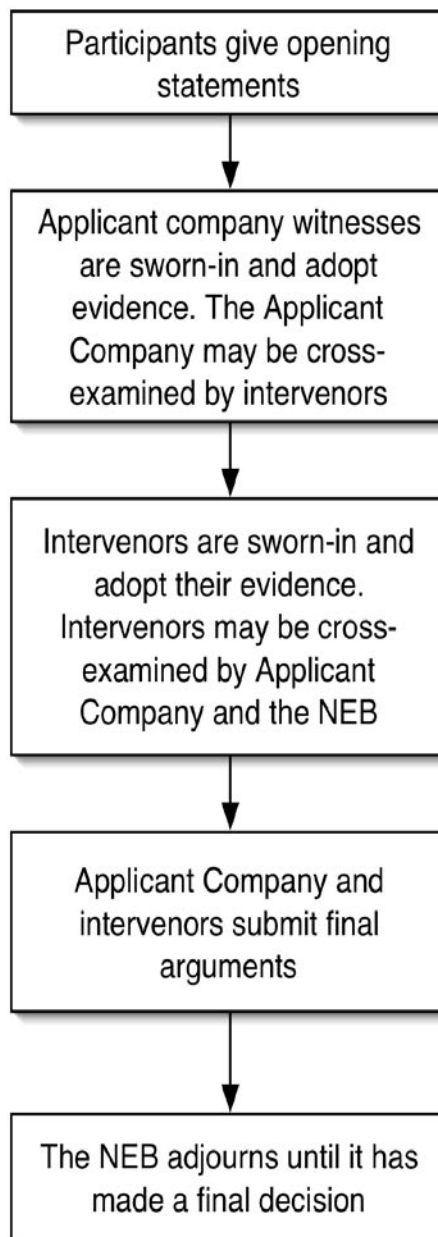
Evidence is the legal term for the statements, reports, photographs and other materials that participants put together to make their case. Evidence must be shared with all participants and the NEB before the hearing. Evidence, and the answers provided on cross-examination form the official record on which the decision is made. At the hearing, you do not restate the content of your evidence but you will be called upon to adopt it under oath. Then, you may be questioned about it by other participants.

⁷ Section 32 of the *National Energy Board Rules of Practice and Procedure, 1995* sets out the requirements for directing an information request to another participant within the time limit the Board may set.

> **What is final argument?**

When all of the participants have had the opportunity to adopt their evidence and cross-examine other participants, they may make one final presentation to summarize their position and describe how the evidence supports their position. This is called final argument - the legal term for the summary and any recommendations that each participant may make. You can present your final argument either orally or in writing. You cannot include any new evidence at this point.

When the hearing date **arrives**



.....>> **Notes**

Lifecycle of a pipeline

Pipeline is designed by company based on supply and markets.

A

Company conducts public consultation program to identify issues and concerns and to determine the general route of the pipeline.

B

Company may commence negotiations with landowners for land rights (easement). Compensation is payable to the landowner. Easement is registered on title.

C

Application to National Energy Board for approval of pipeline project.

D

Board regulatory review may involve certificate hearing and detailed route hearing. If project meets requirements and the Board's approval, the project is approved, usually with conditions.

E

After receiving all approvals and securing land rights, construction commences.

F

Outstanding land rights may involve company seeking right of entry from the Board.

G

Outstanding compensation issues may be addressed through the federal Minister of Natural Resources.

H

I
National Energy Board inspection and monitoring during construction and life of the pipeline.

J
Local changes to pipeline route if unforeseen field conditions are encountered.

M
Settling of compensation if any damages result from construction.

L
Reclamation of land surface and compliance with conditions of approval.

K
Pressure testing after completion of construction.

N
Operation and on-going monitoring and maintenance of the pipeline.

O
On-going public awareness program conducted by the company during the life of the pipeline.

P
Application to the Board for decommissioning and abandonment of the pipeline.





A certificate hearing is required for all proposed pipelines that are more than 40 km long. At a certificate hearing, the NEB considers specific issues related to the project, including the proposed general route of the pipeline.



Certificate **hearings**

When a company applies for approval of a proposed pipeline project, the company asks for a Certificate of Public Convenience and Necessity⁸ (a certificate). The first hearing that the NEB would hold to consider the project is therefore called a “certificate hearing.”

> **What is a certificate of public convenience and necessity?**

A certificate is an approval that is issued by the NEB to a federally-regulated pipeline company. It gives the company approval to construct, operate, and maintain its pipeline. The certificate is issued after the NEB has fully considered the application filed by the pipeline company, taken into account the views of everyone who has participated in the certificate hearing and the project has been formally approved.

> **What is considered at a certificate hearing?**

At a certificate hearing, the NEB considers any and all matters that are viewed as relevant to the question of granting pipeline approval. The issues that are discussed usually relate to the following topics:

- The availability of oil or gas to the pipeline.
- The existence of markets.
- The economic feasibility of the pipeline.
- The financial responsibility and financial structure of the company.
- The extent to which Canadians will have an opportunity to participate in the financing, engineering and construction of the pipeline.
- Any public interest that may be affected.

The NEB also considers the safety and design of the pipeline, environmental effects, social and economic effects on communities, and the general route of the pipeline.

⁸ Section 52 of the NEB Act states that “The Board [NEB] may, subject to the Governor in Council, issue a certificate in respect of a pipeline if the Board is satisfied that the pipeline is and will be required by the present and future public convenience and necessity and, in considering an application for a certificate the Board shall have regard to all considerations that appear to it to be relevant”...

> **How can I get involved in the certificate hearing?**

You may participate in the certificate hearing the following ways:

- i) You may seek status as an intervenor by writing to the NEB.
- ii) If you do not wish to participate as an intervenor, you may write a letter of comment to the NEB.

An intervenor application form is available in Appendix A. This can be used to apply to the NEB to participate at a hearing.

> **What happens after the certificate hearing?**

After the certificate hearing, the NEB will prepare a document that provides the reasons for its decision. If approval is granted, a certificate of Public Convenience is issued, often with certain conditions attached. The company must honour all of the commitments and promises it has made during the hearing process and agree to follow through on all conditions attached to the certificate that have been set out by the NEB.

If the NEB does not approve the project, a certificate would not be issued. The company would then have to consider alternative options, some of which include:

- seeking a review of the decision by the Board;
- seeking permission of the Federal Court of Appeal to appeal the decision;
- revising and resubmitting its application; or
- deciding not to continue with the project.

The certificate may not be the final approval required by the company before it can start construction of the pipeline. If landowners or others object to the proposed detailed route of the pipeline, or the methods or timing of construction, the NEB may be required to conduct an additional hearing process called a “detailed route hearing”, after the certificate is issued. For more information see Section 6.

6



If landowners or others who are affected raise valid objections about the specific details of the pipeline route or about the methods or timing of the construction, the NEB must conduct a detailed route hearing.



Detailed route of a pipeline

Anyone objecting to the detailed route of the pipeline or the methods or timing of the construction should put their concerns in writing and send them to the NEB. However, a detailed route hearing is not automatically held. The NEB can reject any objections that deal with issues outside of its jurisdiction (such as compensation), or that are found to be frivolous, or not made in good faith.

> **What is meant by “methods and timing of construction”?**

Methods of construction describes such things as how the company plans to clear the pipeline right of way, remove and store the top soil, install the pipeline, and reclaim the land. Timing of construction could refer to the time of year when the company plans to build the pipeline, and/or the length of time the construction is expected to last.

> **How can I learn about the company’s application for the detailed route?**

If a certificate is issued, the company is required to file its Plans, Profiles, and Books of Reference (plans and profiles) with the NEB.⁹ The plans and profiles show the precise location of the pipeline (the land that will be crossed), the type of land rights that will be required by the company, and the names of the landowners and land occupants who would be affected.¹⁰

Once the company files the plans and profiles with the NEB, these documents are available to the public. The company is also required to give written notice to all landowners who have an interest in the land along the pipeline route and to publish a notice in local newspapers.

> **How do I get more information on the detailed route?**

You may contact the company to find out where to view the plans and profiles or you may contact the NEB to get more information.

> **What happens if there are no objections to the detailed route?**

If no written objections to the detailed route are received within 30 days of the date of the last notice or of the last date of publication, the Board may approve the detailed route as filed by the company and approve the plans and profiles. The NEB may impose conditions on this approval.

⁹ When the NEB has issued a certificate, plans and profiles are required to be filed pursuant to Section 33 of the NEB Act.

¹⁰ See Subsections 34(3) and 34(4) of the NEB Act.

> **What happens if there are objections to the detailed route? Or, if I want to oppose the detailed route, how can I do so?**

If you wish to object to a proposed detailed route, you must send a letter stating your opposition to the NEB within 30 days after you have received the notice. Your letter must state:

- your interest in the land that will be crossed by the proposed pipeline, or in other land that you believe will be adversely affected; and
- your reasons for opposing the proposed detailed route, the methods of construction or the timing of the construction of the pipeline.

If the NEB receives your letter of opposition within the 30-day period and finds your objections to be valid,¹¹ a detailed route hearing will be held in the area where your land is located.

The NEB may approve the plans and profiles filed by the company for the parts of the route for which objections have not been received. The NEB generally establishes an appropriate buffer zone on either side of the property for the areas of the route for which objections have been received. Construction of these areas may not begin until the objections have been addressed.

Before the hearing, Board staff will contact the landowners and the company to discuss the possibility of mediating the objection. If the parties agree to mediation, a time and place will be scheduled to conduct the mediation.

BUFFER ZONE

If there is an objection to a section of the pipeline route, the Board may establish a buffer zone on either side of this section. This means that work on the pipeline in that section and in the buffer zone cannot proceed until the objection has been settled.

> **What is mediation?**

Mediation is a voluntary, informal and confidential process in which Board staff assists companies and landowners to negotiate a mutually satisfactory resolution of an objection. If a detailed route hearing is scheduled, mediation is offered as an option. It takes the form of a personal meeting between the landowner and company guided by NEB staff trained in mediation. If the disagreement is not settled through mediation then a detailed route hearing will still be held. Mediation services are confidential and will not delay the hearing process. Details of the procedures for mediation may be found on the NEB Web site at www.neb-one.gc.ca or by calling **1-800-899-1265**.

¹¹ Subsection 35(5) of the NEB Act states that the NEB is not required to give any notice, hold any hearing or take any other action if the person who filed a written statement of opposition files a notice of withdrawal or, if it appears to the NEB that the written statement is frivolous or vexatious or is not made in good faith.

> **Who else can participate at the detailed route hearing?**

In addition to the landowners whose land would be crossed by the pipeline and those people whose land may be adversely affected, anyone with a justifiable interest may apply to the NEB to participate in the detailed route hearing. You must follow the requirements for filing an intervention as described in the *National Energy Board Rules of Practice and Procedure, 1995*. The NEB will decide whether you have sufficient interest in the detailed route hearing to be allowed to participate.

> **How will I know about the time and place of the detailed route hearing?**

The NEB prepares a notice of hearing and requires the company to notify everyone whose written opposition was found to be valid. The company is also required to publish the notice in general circulation newspapers in the area where objections have been raised so that anyone else who is potentially affected or interested will be informed about the hearing.

> **How should I prepare for a detailed route hearing?**

You should prepare for a detailed route hearing as you would for any other type of hearing (see Section 4).

You may hire a lawyer, and/or any other expert you feel may help you prepare for the hearing. When the detailed route hearing is over, you may submit a claim to have any reasonable costs reimbursed by the company. A record of your expenses along with the receipts for those expenses will be required.

> **What happens at the detailed route hearing?**

The same general procedures are followed at a detailed route hearing as are followed at a certificate hearing (see Section 5). At the detailed route hearing, you may point out what you believe to be issues with the company's proposed detailed route, with the methods of construction or the timing of construction. If you propose an alternate route (or routes), you should provide the reasons why you believe that route is equal to, or better than the company's proposed route.

When suggesting an alternate route, it is helpful to present your proposed route on a map of the area. You will be required to provide the information about your proposed alternate route to all the other hearing participants before the hearing takes place.

> **What does the NEB decide after the detailed route hearing?**

After considering the evidence presented at the detailed route hearing, the NEB will decide whether the company has proposed the best possible detailed route for the pipeline and the most appropriate methods and timing for building the pipeline. If there is no settlement on the issue of the detailed route, and if you (or others objecting to the route) do not withdraw your objection, the NEB may make one of three decisions:

- to accept the company's detailed route, with or without conditions;
- to reject all or part of the company's detailed route; or
- to require more information from the participants before making a decision.

The NEB must send a copy of the decision to each participant at the detailed route hearing and to the federal Minister of Natural Resources.

Landowners, tenants, or others who dispute the Board's decision have two options:

- they can request that the Board review the decision; or
- they may apply to the Federal Court of Appeal for permission to appeal the decision.

If the NEB rejects the company's detailed route, the company has three options:

- the company may seek a review of the decision;
- it may request permission to appeal the decision to the Federal Court of Appeal; or
- it may reapply with a new detailed route - one that it believes will satisfy the NEB's concerns. If valid objections about the new application are received by the NEB, another detailed route hearing would be required.

> What costs am I entitled to receive for participating in the detailed route hearing?

After the hearing, you may submit a claim to the company for the costs of participating in the detailed route hearing.¹² You must provide receipts with:

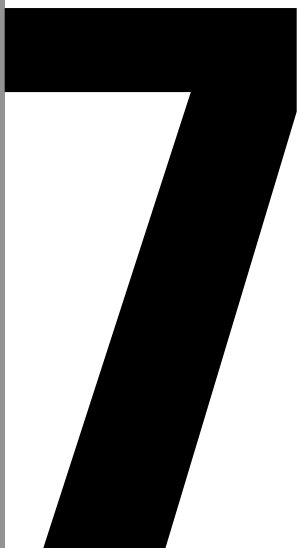
- the amount of the actual costs;
- to whom they are owed; and
- the reasons those costs were incurred.

Examples of reasonable costs may include legal fees, consultants' fees, or costs for attending the hearing. If you and the company do not agree on the amount of the costs that you claim, you can ask the NEB to determine the amount.

¹² An application for a cost claim is made under Section 39 of the NEB Act. The NEB "may fix such amount as it deems reasonable in respect of the actual costs reasonably incurred by any person who made representations to the Board at a public hearing," and the amount shall be payable to that person by the company.



The company may have its certificate and approval from the Board for the detailed route of the pipeline, but what if you have not signed an easement or option agreement with the company?



Right of entry onto land

The company may have its certificate and approval from the Board for the detailed route of the pipeline, but what if you have not signed an easement or option agreement with the company? If you and the company have not been able to reach an agreement over access to your land (easement, or temporary workspace), then the company may decide to apply to the NEB for a right-of-entry order.

> **What happens if the company and I do not reach an agreement?**

If the company and you do not finalize an easement agreement, the company may apply in writing to the NEB asking for a right of entry order that would allow the company to have an immediate right to enter your land. If the NEB grants the right of entry order, the company has to register that order at the local land titles or registry office. The company then has the right to enter your land for the purposes stated in the order. The NEB may place any conditions on the order that it considers to be appropriate. For more information about these conditions, see Section 9.

> **What rights do I have if the company applies for a right of entry order?**

The company must provide written notice to you if it plans to apply to the NEB for the right of entry.¹³ The company must prove to the NEB that it served you with a notice no less than 30 days and no more than 60 days from the date that it will apply to the NEB. This notice must tell you:

- the date when the company plans to apply to the NEB;
- the date when the company wishes to enter the land;
- the NEB's address, so that you can send the NEB any written objection you may wish to make about the potential issuance of the order; and
- your right to an advance compensation payment if the order is issued.

¹³ A right of entry application is made pursuant to Section 104 of the NEB Act. Part 5 of the *National Energy Board Rules of Practice and Procedure, 1995* describe the information required in applications and written objections.

> **How do I object to the right of entry order?**

The company must serve you a copy of the right of entry application on the same day that it applies to the Board. If you choose to object to the right of entry order, the Board must receive your written objection within 10 days after you have received the company's application. Your letter should give detailed reasons why you object to the right of entry order being issued. The company has up to seven days to reply to the Board and to you in response to your written objection.

The NEB will consider the company's application, your written objection, and the company's response to your objection before deciding whether to grant the company's request for the order. If the NEB decides to grant the right of entry order, you would be entitled to receive advanced compensation from the company. If you disagree with the amount of compensation offered by the company, either you or the company may choose the negotiation or arbitration process (see Section 8).

..... >> **Notes**

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8



While the NEB does not have jurisdiction over compensation matters, this information may help you in understanding how compensation matters may be addressed.



You may not be able to agree with the company on how much you should be paid to compensate you for the use of your land or for damage that may occur because of the construction or maintenance of the pipeline. While the NEB does not have jurisdiction over compensation matters, this information may help you in understanding how compensation matters may be addressed.

> **How is the amount of compensation negotiated?**

The amount of compensation paid for an easement is negotiated between the company and the landowner. Most companies retain qualified appraisers to determine the market value of the land. This provides a basis for determining the compensation to be paid for the use of the land. Compensation may also be available for, but not limited to:

- the use of any temporary work space;
- any inconvenience or nuisance caused by the construction of the pipeline;
- loss of use of the land; and
- any damages.

> **What if I object to the amount of compensation offered by the company for the use of my land or for damages?**

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

> **How does the compensation process work if either party disagrees?**

If you and the company cannot agree on the amount of compensation you should receive, either of you can ask the federal Minister of Natural Resources for help in settling the issue. You may send a letter to the Minister and request to have the issue settled either by negotiation or arbitration. You will need to send a copy of the request to the company as well. If the company writes the letter, the company must send you a copy. Requests can be forwarded to:

Minister of Natural Resources
580 Booth Street
Ottawa, Ontario K1A 0A6
Telephone: (613) 996-2007
Facsimile: (613) 996-4516

I) Negotiation

If you request negotiation, the Minister will appoint a negotiator to meet with you and the company in an informal local setting to negotiate a settlement. However, neither you nor the company are bound by the negotiation process. Either you or the company can stop participating in the negotiation process at any time, and ask to have the issue settled by arbitration instead.

II) Arbitration

If you request arbitration, either as your first choice in settling the matter or as a result of the negotiations failing, the Minister will appoint three people to sit on an arbitration committee. The arbitration committee will set a place and time for a hearing and notify you and the company. At the arbitration hearing, the committee members may take into account some or all of the following:

- the market value of the land taken by the company;
- where payments are made annually or according to a regular schedule, any changes in the market value of the land since the easement agreement was signed, or since the last time the payments were reviewed or adjusted;
- your loss of the use of the land;
- the adverse effect on the rest of the land;
- the nuisance, inconvenience and noise caused by the company;
- damage to lands in the area of the pipeline that might be reasonably caused by the operations of the company;
- loss of, or damage to livestock or other personal property that has been caused by the operations of the company;
- any special difficulties in relocating you or your property; and/or
- any other factors the arbitration committee members consider proper in the circumstances.

The arbitration committee members will then put their decision and reasons in writing. This decision binds both you and the company. However, if you or the company are not satisfied with the committee's decision, you have two other options:

- i) you may appeal the arbitration committee's decision on a question of law or jurisdiction. The appeal would be heard by the Federal Court, Trial Division within 30 days after the decision of the arbitration committee is issued; or
- ii) even if you had not been able to come to an agreement before, you and the company could still agree on an amount of compensation acceptable to you both, regardless of what the arbitration committee had decided. This agreement would override the decision of the committee.



Conditions are the specific measures the NEB requires the company to take in order to protect the environment, public and private property, and ensure the pipeline is built safely and efficiently. Conditions may apply to activities before construction, during construction, and after construction.



9

Approval conditions and NEB inspections

Even though a pipeline company may have been given approval for its project, the NEB will have attached conditions to the approval which the company must follow.

> **How does the NEB enforce the conditions?**

The NEB can monitor the company's performance in several ways, one of which is through field inspections carried out by NEB Inspection Officers and specialized staff. They monitor the company's activities to make sure it is meeting the conditions that the NEB has set.

If a condition is not being followed, the Inspection Officer may try to resolve the problem in one of three ways:

- address the issue by talking with the company;
- request an Assurance of Voluntary Compliance (AVC) - an AVC is a written commitment from the company to the Inspection Officer that the company will correct the non-compliance problem within a given period of time; or
- issue an Order to the company or any person(s) involved with the pipeline either to stop work or take specific actions.

The action taken to enforce approval conditions depends upon the degree to which the violation may adversely affect the safety of the public or environment.

> **What other options are available to the NEB?**

In addition to the options available to Inspection Officers who find non-compliance problems, the NEB may revoke or suspend a company's Certificate of Public Convenience and Necessity with the approval of the Governor in Council.



Building a pipeline is a complex process involving specialized people and equipment. The pipeline is built section by section, and while the building crews move progressively down the pipeline route, other teams of workers come along behind them to begin the clean-up process.

10



Building a pipeline is a complex process involving specialized people and equipment. The pipeline is built section by section, and while the building crews move progressively down the pipeline route, other teams of workers come along behind them to begin the clean-up process.

> **What are the steps in constructing a pipeline?**

Once the company gets approval from the NEB and the land rights have been obtained, pipeline construction generally follows these steps:

- 1) The pipeline location is surveyed (often further studies are done as conditions of pre-construction).
- 2) Fences are opened along the right of way and work space area and may be removed temporarily.
- 3) Trees are cleared from the right of way and work area.
- 4) The layers of topsoil and subsoil are stripped off and each is stored separately.
- 5) The ground is graded to provide a smooth and safe work surface.
- 6) The pipe sections are laid out in order (“stringing” of the pipe).
- 7) The pipe sections are welded together.
- 8) The welds are checked using X-Ray and/or Ultrasonic tests.
- 9) The trench for the pipe is dug.
- 10) The pipe is coated with a protective layer.
- 11) The pipe is lowered into the trench.
- 12) The trench is backfilled with subsoil to bury the pipe.
- 13) The topsoil is replaced.
- 14) The pipe is pressure tested to ensure it can operate safely.
- 15) The work site is cleaned up (e.g. fences repaired).
- 16) The pipeline is put into operation with the permission/approval of the NEB.
- 17) The land is reclaimed.

> **What limits are there on my use of the right of way during construction?**

For safety reasons, the company can prevent people from being on the right of way if they are not associated with pipeline construction activities. The company will usually provide a crossing for the purpose of moving cattle or other related activities. You should negotiate the location of the crossing (or crossings) when you negotiate your easement or option agreement with the company (these agreements are described in detail in Section 2).

> **What standards are there in Canada to ensure that pipelines are designed and built for safety?**

The Canadian Standards Association (CSA) is a non-profit, independent organization that develops standards for quality, safety, and performance for many familiar activities and products, including pipelines. The NEB *Onshore Pipeline Regulations, 1999* require that pipelines be designed, constructed, operated, and abandoned in accordance with the CSA Standard Z662, “*Oil and Gas Pipeline Systems.*” CSA standard Z662 gives a detailed description of the technical requirements for pipeline systems. It describes how they must be designed, built, tested, and operated.

> **How are pipelines protected from corrosion?**

There are two commonly used methods of preventing pipe steel from corroding: *pipe coating* and *cathodic protection*.

Several different protective coatings may be used on the outside of steel pipes to protect them from corrosion. The most common coating used today on large-diameter pipelines is epoxy, a paint-like substance that seals the steel surface from air or moisture. Alternatively, smaller pipelines are commonly coated with polyethylene, a type of plastic. An external coating is the first line of defense against corrosion.

The second method of preventing corrosion is cathodic protection. Cathodic protection relies on “sacrificial metals” that corrode more easily than the pipe steel. These sacrificial metals protect the pipe by forcing the corrosion which would normally occur on the pipe to occur on metal that is separate from the pipe. This metal is called an anode. The anode is designed to divert the corrosion from the pipe steel to itself. The anode is replaced from time to time, allowing the pipe steel to remain free of corrosion.

> **How does the company decide how thick the pipe wall needs to be?**

The thickness of the pipe wall depends on many things. The company considers the amount of pressure that will be used to move the contents through the pipeline. The size of the pipe (the diameter) will also be considered, and so will the strength of the steel used in the pipe. The wall thickness will be calculated on the basis of these technical considerations with additional safety factors added. One such safety factor is based on the number of people living or working within the area of the proposed pipeline. When pipe passes through an area with a high population density, there is increased risk of damage to the pipe by third parties. This increased risk is addressed by using thicker-walled pipe or a higher grade of steel. All pipe used in NEB-regulated pipelines must meet the standards set by the Canadian Standards Association. There are four safety categories: class 1, 2, 3 and 4. The higher the category, the more the pipe needs to be resistant to damage.

> **What happens to the land once the pipeline is in the ground?**

Once the pipeline is in the ground, the company will clean up and reclaim the land used for construction activities. The land is re-contoured to re-establish drainage, subsoil and topsoil are put back in place, any debris is removed from the construction area, slopes are stabilized, vegetation is seeded, and structures which were affected by construction such as tile drain and fences, are repaired. The company will continue to monitor the right of way to make sure the area has been successfully reclaimed in accordance with the conditions attached to the approval or as agreed to by the company. The company is responsible for correcting problems, including those which may continue year to year such as reduced crop yield on the right of way and temporary workspace. Compensation for crop loss may be available (see Section 8).

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.....» **Notes**

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Landowners and persons working around the pipeline also have responsibilities, as safe operation of the pipeline affects what people can do around the pipeline.



Operating and maintaining a pipeline

The company has a responsibility for the safety of the pipeline, the environment, and the people who live and work in the area around the pipeline. Landowners and persons working around the pipeline also have responsibilities, as safe operation of the pipeline affects what people can do around the pipeline.

> **What monitoring activities take place during the operation of the pipeline?**

Pipeline companies regularly patrol and inspect their rights of way. Company employees may walk the right of way, or conduct patrols from the air. They look for signs of any damage, leaks, or unauthorized activity that could pose a hazard to people, property, or the pipeline. In addition, the company may sometimes use an internal pipeline inspection tool called a “pig” to inspect the pipeline from the inside. The pig scans the pipe for defects that may have been caused during the pipeline’s construction or operation.

> **What ongoing communication does the company have with the public once the pipeline begins to operate?**

Pipeline companies regulated by the NEB are required to create and maintain public awareness programs for the life of the pipeline. Through these programs, companies are required to tell landowners, tenants, and other people about the presence of the pipeline and how to work safely near it. The company is also required to monitor activity in the area of the pipeline and to restrict or prevent activities that could affect the safe operation of the pipeline.

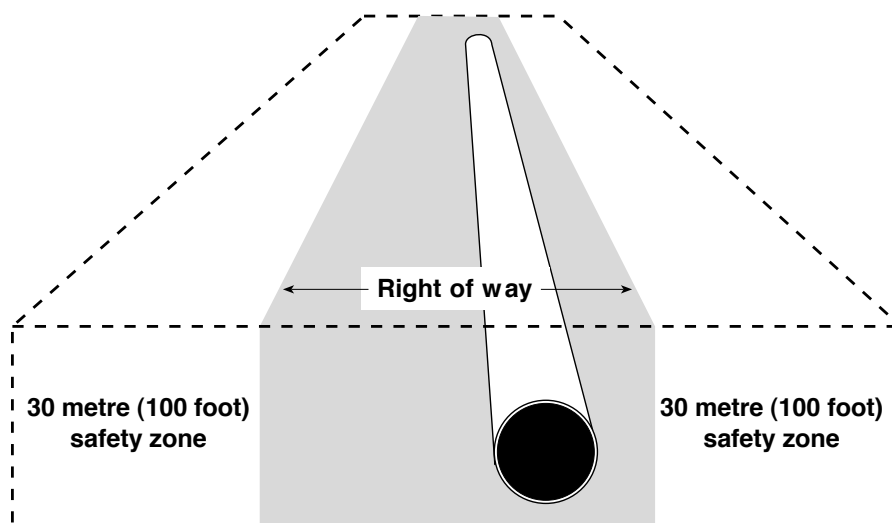
> **Do companies have programs for dealing with emergencies that may occur on the pipeline?**

Although major pipeline incidents are rare, companies are required by the NEB to have an emergency procedures manual and a continuing education program for the police, fire departments, medical facilities, other appropriate organizations and agencies, and the people who live adjacent to the pipelines. The programs inform people of the location of the pipeline, potential emergency situations involving the pipeline, and the safety procedures that should be followed in case of an emergency.

> **What is the 30 metre safety zone?**

A 30 m safety zone is required by law. It is established on each side of the pipeline and exists to ensure the safety of people, property, and the pipeline itself. It is not part of the easement agreement and it does not give the company an interest in the land, nor is it registered on the land title.

Right of way and 30 m safety zone



> **What activities are restricted within the 30 m safety zone?**

Although the existence of the 30 m safety zone does not prevent land development within the zone, the NEB Act requires any individual who wants to dig using explosives or power machinery within the 30 m safety zone to first obtain approval from the pipeline company. If the company is confident that the work will not interfere with the pipeline and will not threaten public safety, the company may give its permission.

If the company does not give you permission, you can apply to have the NEB consider your request.¹³

> **What activities are restricted within the right of way?**

The NEB Act prohibits construction and excavation activities using machinery or explosives unless the Board or the pipeline company has provided permission.¹⁴ Construction and excavation activities are prohibited to ensure your safety, the safety of the pipeline and the protection of the environment. Usually, the easement agreement will include a clause stating that the landowner shall not, without prior consent from the company, excavate, drill, install or erect any pit, well, pipeline, foundation, pavement, building or other structure, across, on, along or under the right of way.

¹³ Section 112(1) of the NEB Act states that "No person shall, unless leave is first obtained from the Board, construct a facility across, on, along or under a pipeline or excavate using power operated equipment or explosives within thirty metres of a pipeline." See also the brochure "Living and Working Near Pipelines".

¹⁴ Subsection 4(b) and 6(b) of the *National Energy Board Pipeline Crossing Regulations, Part I*.

The NEB Act also prevents other activities over the pipeline right of way including:

- driving a vehicle or mobile equipment over the right of way where there is no highway or public road (unless permission is granted by the company¹⁵); and
- prospecting for mines and minerals, or doing any seismic activity within 40 m of a pipeline.¹⁶

While most farming activities can resume over a pipeline right of way, the use of some types of machinery may be restricted. The company will be concerned about the effects of loads transmitted to the pipeline through the soil as a result of vehicle and mobile equipment loads, any rutting or soil compaction, and any reduction in the depth of soil covering the pipeline. Heavy machinery, such as logging trucks crossing over the pipeline can damage the pipe or its coating. Even minor damage that may not seem serious at the time can later cause safety concerns.

If you wish to do any excavation or construction, use machinery or explosives, or cross the right of way with vehicles or mobile equipment outside of a traveled roadway, you must obtain the approval of the pipeline company. **Always call before you dig or build**—it should be the first thing you do.

> **Are farming activities restricted?**

In most instances, farming activities can take place over a pipeline right of way because farm equipment does not usually cause significant rutting or soil compaction over the pipeline. Companies can and do typically provide a blanket approval for most agricultural machinery; however, the NEB Act requires that persons contact the company and obtain this leave prior to moving any vehicles or mobile equipment across the right of way.

You will need to get the company's permission if you want to cultivate deeper than 30 cm on any part of the right of way. Activities such as subsoiling and deep tillage can disturb soil conditions below the surface which could damage the pipeline, its coating material, or result in the instability of the soil around the pipeline.

Landowners wanting to grow specialty crops such as Christmas trees, soft fruit or vineyards should discuss their operations with the pipeline company to determine if permission is needed. Some specialty crops interfere with access to the pipeline system for emergency response and maintenance purposes.

¹⁵ Subsection 112(2) of the NEB Act

¹⁶ Subsection 81 of the NEB Act

> **What about public access to the right of way?**

Once a pipeline is in operation, the presence of the pipeline right of way does not give the public the right to enter your land. You still retain ownership of your land where the pipeline is located. Anyone entering onto your land without your permission or authorization is trespassing and you may have a legal claim against that person. Landowners often negotiate to have the company put up fences, notices or other barriers to discourage people from trespassing.



The role of the Board is to make sure that the abandonment is carried out in a way that ensures public safety, protects property and the environment.

12



Abandonment

Ultimately, when a pipeline's capacity to be useful diminishes it will be abandoned. In some cases, pipelines may be deactivated or taken out of service for periods of time before they are abandoned. An application for the abandonment of a federally-regulated pipeline requires a public hearing.

Typically, abandonment is achieved either through pipeline removal or "abandonment in place," meaning that the pipeline is left in the ground. The choice between the two options depends on the current and future uses of the land.

> **What steps need to be taken to abandon a pipeline?**

There are several steps involved in abandoning a pipeline:

- The company applies to the Board for permission to abandon the pipeline; then
- A public hearing is held to decide whether the abandonment would be in the public interest and whether the procedures proposed would provide for adequate safety and protection of the environment.

If the Board decides to allow the abandonment, the company must complete the steps it promised to take during the hearing or which the NEB requires the company to take. If the NEB is satisfied with what the company has done, the NEB's abandonment order takes effect and the company abandons the pipeline. At that point, the pipeline is no longer under the jurisdiction of the NEB.

> **Is there an early public notification program for a pipeline abandonment hearing as there is with a certificate hearing?**

No. However, if you are a landowner, an occupant or owner of facilities crossed by the pipeline, the company should be in touch with you as early as possible to ensure that your concerns are dealt with at the planning stage of the abandonment. The NEB does ask the company about the process they will use to communicate with landowners and deal with concerns.

> **Will there be a public hearing?**

Yes, public hearings for abandonment applications are required by the NEB Act. The proceedings of these public hearings may be conducted either orally or through written procedures.

> **Who can participate in an abandonment hearing?**

Anyone who can demonstrate an interest in the issue can participate.

> **How can I participate in the hearing?**

Refer to Section 4 for information about your options.

> **What does the company do to prepare a pipeline for abandonment?**

The procedures are different for each abandonment depending on the location of the pipeline and the future uses proposed for the land. The company's abandonment plan usually addresses key issues that relate to public safety, environmental protection, and future land use. These include:

- Land use management
- Ground settling
- Soil and groundwater contamination
- Pipe cleanliness
- Water crossings
- Soil erosion
- Utility and pipeline crossings
- Creation of water conduits, where water travels through the pipeline
- Related pipeline equipment, e.g. risers, valves, piping, etc.

.....» **Notes**

Lined area for notes, consisting of 25 horizontal lines.



There are several applications for which the *National Energy Board Act* does not require a hearing to be held. These include applications such as:

- proposals for pipelines less than 40 km in length;
- changes to the route of a pipeline after it has been constructed or approved; and
- purchases or sales of pipelines.



Non-hearing applications

Some proposed activities that are routine or repetitive in nature, and that meet certain requirements as listed in the NEB's Streamlining Order,¹⁷ may be exempt from the application process. In these cases, the company is still required to comply with the NEB's legislation and regulations.

Even if a hearing is not held, the NEB will still examine the application to make sure that it complies with legislation, regulations, and follows the *Guidelines for Filing Requirements*. However, in some instances the Board may decide that the circumstances warrant a hearing.

> **What other activities are possible after the pipeline is constructed?**

Anytime after a pipeline is built, the company may decide to make additions or modifications to the pipeline. For example, the company may want to build an additional pipeline in the same right of way, add more pumps or compressors along the route, or put an additional right of way beside the first. The company may also want to sell the pipeline to another company. All of these activities require NEB approval. The company may also be required to negotiate with the landowners for any additional land rights it may need for the project.

> **Will a hearing be required to consider these additional facilities or activities?**

Not necessarily. The company may ask to be exempted from some of the requirements of the NEB Act. For this type of application, made pursuant to section 58 of the NEB Act, the NEB is not required to hold a hearing to consider the company's proposal. However, if third party interests warrant a hearing, then one may be held or opportunities for input from these third parties would be provided.

> **If the NEB grants certain exemptions to the company, how will I find out about the proposed construction activities?**

The NEB reviews the application to make sure it complies with the NEB Act, regulations and other requirements before deciding whether to approve the project. The company is required to include evidence in its application that there has been meaningful public input during the planning and design phase of the project. An early public notification (EPN) program may be required to explain the project to the public, and to respond to their questions and concerns.

¹⁷ The NEB Section 58 Streamlining Order XG/XO-100-2000 lists certain types of routine projects that are exempt from the application process.



Individual Canadians play an important role in NEB processes. The NEB wants to hear from people with an interest in a project before making a decision about a company's proposal. The Board wants to feel confident that every point of view has been heard so that its regulatory decision strikes the right balance among all the interests.

14



For more **information**

Thank you for taking the time to learn about the NEB's regulatory process for pipeline projects. We hope this guide has answered many of your questions. For more information:



Mailing address

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



General information about the NEB and the energy sector

- Mail: General Inquiries at the above address
- Telephone: (403) 292-4800 or 1-800-899-1265
- Fascimile: (403) 292-5503
- E-mail: info@neb-one.gc.ca



Publications may be ordered via

- Mail: Publications Office at the above address
- National Energy Board Library located on the ground floor
- Telephone: (403) 299-3562 or 1-800-899-1265
- Fascimile: (403) 292-5576
- E-mail: publications@neb-one.gc.ca

APPENDICES



APPENDIX A



National Energy Board Office national
de l'énergie

Application form for intervenor status

Name of project: _____

Applicant / company name: _____

Hearing number: _____

This information can be found in the Hearing Order which is located on the NEB Web site at www.neb-one.gc.ca under "Regulatory Documents" or in the NEB Library: Main Floor, 444 Seventh Ave SW, Calgary, AB, T2P 0X8.

Application form for intervenor **status**

> **Intervenor's contact information**

Name: _____

Telephone: _____ Facsimile: _____

Mailing Address: _____

Residence Address: _____

E-mail address: _____

> **If applicable, please provide the following information for any authorized representative:**

Name: _____

Telephone: _____ Facsimile: _____

Mailing Address: _____

Residence Address: _____

E-mail address: _____

> **1. What is your specific interest in the project?**

> **2. Do you or your authorized representative intend to appear at the public hearing?**

Yes No

> **3. What specific issues do you intend to discuss at the hearing?**

- > **4. If you do not intend to actively participate at the hearing, please provide the reasons for wanting intervenor status for this hearing.**

- > **5. What issues do you wish to add to the List of Issues and what is the justification for adding that issue?**

- > **6. Which official language do you wish to use in correspondence with the Board and at the public hearing?**

English French

- > **7. If you are able to view documents through the Board's electronic document repository, you may receive a notification when documents have been electronically filed.**

I am able to receive notification that documents have been filed electronically.

Yes No

- > **8. If you are not able to use the Board's electronic document repository, indicate why not.**

- > **9. Do you wish to receive notification when documents have been submitted to the electronic document repository, or if you are unable to use the repository, do you wish to receive your own copy of all written documents? Note: you may view documents at various locations (you may have to call the Board's toll free number to find those locations).**

I wish to receive all written documents? Yes No

- > **10. If you wish to provide evidence to the Board you must file your written evidence, and any related documents, before the start of the oral hearing.**

Will you be filing written evidence? Yes No

- > **11. Do you intend to question the Applicant or intervenors on their evidence?**

Yes No

- > **12. Do you intend to present a final argument at the end of the hearing?**

Yes No

- > **13. Do you require a copy of the daily transcripts?**

Yes No

Signature: _____ **Date:** _____

Please file this form with the Board and serve the Applicant and its counsel by mail or fax to :

Mr. Michel L. Mantha
Secretary
National Energy Board
444 - 7th Avenue SW
Calgary, AB
T2P 0X8
Facsimile: (403) 292-5503

Note: If you have any questions about the hearing or hearing procedures, please contact the Board at 1-800-899-1265, or by e-mail: secretary@neb-one.gc.ca.

APPENDICES



APPENDIX B

The oral hearing **process**

The oral hearing process follows many of the procedures that you might find in a court of law.

> **Before the hearing ...**

- 1) A company files an application with the NEB for approval of a project.
- 2) The Board may decide to hold a public hearing, either because the NEB Act requires it, or because of the circumstances.
- 3) A Hearing Order is issued.
- 4) A Notice of Public Hearing is published - it lists the location, time of the hearing, and the procedures to be followed.
- 5) Interested individuals and organizations who are affected by the project may wish to formally participate in the proceeding and become intervenors. If you do not want to be an intervenor, you have the option of submitting a letter of comment. Both of these processes are described in Section 4.
- 6) The NEB sets out the initial list of issues or concerns for discussion at the hearing.
- 7) NEB staff may hold public information sessions about the hearing process.
- 8) The NEB reviews the applications of intervenors, and registers those whose applications are accepted.
- 9) Participants are required to file their evidence.
- 10) Those registered to participate in the hearing may make written requests for information about evidence from other participants before the hearing, and may be asked for information about their evidence as well.

> **When the hearing begins...**

- 1) Participants may make short opening statements to summarize their positions and points of view when the hearing begins. Participants do not need to restate the details of their previously filed evidence. Participants may not introduce new information or evidence at the hearing, unless the Board gives them permission to do so. New information could take other participants by surprise, and could result in poor use of the hearing time. If you plan on making an opening statement, you will need the Board's permission to do so. You should put your request in writing at least one day before the date of your appearance at the hearing. In addition, your opening statement must be filed with the NEB at least one day before your appearance at the hearing.

- 2) Witnesses for the applicant company will be sworn in first, and they will then adopt their pre-filed evidence. By adopting evidence, a participant in the hearing is stating that the information is accurate and truthful and was prepared by them or under their supervision. The company may then make its opening statement. Following this, the other participants, including the NEB, may cross-examine (ask questions) the company about its application or about other evidence the company may have presented.
- 3) Next, the intervenors who have filed evidence take turns being sworn in, adopting their evidence, and making their opening statements. As each person finishes, the company and other participants, including the NEB, may then cross-examine the intervenor about the evidence he or she has presented.
- 4) The company and intervenors may then present final arguments, in writing or orally, which summarize their positions and the evidence they presented.
- 5) At this point, the hearing may be adjourned until the NEB announces a decision. Although the NEB hearing panel may make its decision and announce its ruling immediately, usually the Board Members need more time to consider the evidence provided by the participants. In these cases, the NEB panel reserves its decision, meaning that the decision will be issued in writing at a future date.

> **At a later date...**

- The hearing panel publishes its decision with the reasons for its decision. The NEB may decide to approve the project, to approve it with conditions (see Section 9), or to deny approval of the application.
- If the NEB decides to approve a project and issue a Certificate of Public Convenience and Necessity or “certificate,” the certificate will come into effect when the Governor in Council gives his/her approval.



NOTES

APPENDICES



APPENDIX C

National Energy
Board



Office national
de l'énergie

Environmental Policy

The National Energy Board (NEB) strives to ensure, for projects under its jurisdiction, that activities are undertaken and facilities are designed, constructed, operated and decommissioned in a way that promotes environmental protection.

The NEB promotes sound environmental decision-making throughout its activities, consistent with the principles of sustainable development, prevention of pollution, cost effectiveness and in compliance with all applicable environmental legislation and other requirements.

The NEB promotes responsible environmental management.

The NEB regulates the implementation of, and assesses the effectiveness of, environmental requirements such as mitigative measures, environmental conditions attached to project approvals and environmental protection programs.

The NEB collaborates with other regulators, the energy industry and the public to develop approaches that improve environmental protection in respect of its regulatory activities.

The NEB provides appropriate resources and training to meet its environmental commitments.

The NEB commits to continual improvement of its environmental performance to ensure compliance with its Environmental Policy and to communicate its policy and environmental performance to all employees and the public.

A handwritten signature in black ink, appearing to read 'K. Vollman'.

Kenneth W. Vollman

September 2000

APPENDICES



APPENDIX D

Provincial regulators

> ALBERTA

Alberta Energy and Utilities Board (EUB)

640 - 5 Ave. S.W.

Calgary, Alberta, T2P 3G4

www.eub.gov.ab.ca

General Inquiries: 403-297-8311

Department of Energy

10th Floor, Petroleum Plaza, North Tower

9945 - 108 St.

Edmonton, Alberta, T5K 2G6

www.energy.gov.ab.ca

General Inquiries: 780-427-7425

Electricity & Gas Division: 780-422-9119

Oil Development Division: 780-422-0514

> BRITISH COLUMBIA

Ministry of Energy and Mines

1810 Blanshard Street

P.O. Box 9319, Stn. Prov. Govt.

Victoria, British Columbia, V8W 9N3

www.gov.bc.ca/em

General Inquiries: 250-387-5896

British Columbia Utilities Commission

6th Floor, 900 Howe St.

Box 250

Vancouver, British Columbia, V6Z 2N3

www.bcuc.com

General Inquiries: 604-660-4700

Toll Free: 1-800-663-1385 (in British Columbia)

Provincial regulators

CONTINUED

> **MANITOBA**

Manitoba Industry, Trade & Mines

Petroleum Branch

360 - 1395 Ellice Ave.

Winnipeg, Manitoba, R3G 3P2

www.gov.mb.ca/itm/petroleum/index.html

General Inquiries: 204-945-6577

Manitoba Public Utilities Board

Room 400, 330 Portage Avenue

Winnipeg, Manitoba, R3C 0C4

www.gov.mb.ca/cca/publutil/index.html

General Inquiries: 204-945-2638

Toll Free: 1-866-854-3698 (in Manitoba)

> **NEW BRUNSWICK**

Department of Natural Resources & Energy

Floor 5, 1350 Regent Street

Hugh John Flemming Forestry Complex

Fredericton, New Brunswick, E3C 2G6

www.gnb.ca/0078/index-e.asp

General Inquiries: 506- 453-3826

New Brunswick Board of Commissioners of Public Utilities

Room 1400, 15 Market Square

P.O. Box 5001

Saint John, New Brunswick, E2L 4Y9

www.pub.nb.ca

General Inquiries: 506-658-2504

Toll Free: 1-866-766-2782

Provincial regulators

CONTINUED

> NEWFOUNDLAND

Nfld Department of Mines and Energy
Natural Resources Building
P.O. Box 8700
St. John's, Newfoundland , A1B 4J6
www.gov.nf.ca/mines&en
General Inquiries: 709-729-6849

Nfld Board of Commissioners of Public Utilities
Prince Charles Bldg.
120 Torbay Rd.
P.O. Box 21040
St. John's, Newfoundland, A1A 5B2
www.pub.nf.ca
General Inquiries: 709-726-8600

> NORTHWEST TERRITORIES

Public Utilities Board of the NWT
203 – 62 Woodland Drive
P.O. Box 4211
Hay River, Northwest Territories, X0E 1G1
General Inquiries: 867-874-3944

Department of Resources, Wildlife & Economic Development
P.O. Box 1320
Yellowknife, Northwest Territories, X1A 2L9
www.gov.nt.ca/RWED/index.html
General Inquiries: 867-920-8967
Minerals, Oil & Gas Branch: 867-920-3214
Environmental Protection / Energy Management: 867-873-7654

Provincial regulators

CONTINUED

> **NORTHWEST TERRITORIES (CONT.)**

Department of Public Works & Services

Stuart Hodgson Building

P.O. Box 1320

Yellowknife, Northwest Territories, X1A 2L9

www.pws.gov.nt.ca

General Inquiries: 867-873-7114

Petroleum Products Division: 867-920-3447

> **NOVA SCOTIA**

Department of Natural Resources

Founder's Square

1701 Hollis St.

P.O. Box 698

Halifax, Nova Scotia, B3J 2T9

www.gov.ns.ca/natr

General Inquiries: 902-424-5935

Nova Scotia Department of Energy

Suite 400 - 5151 George St.

Bank of Montreal Bldg.

P.O. Box 2664

Halifax, Nova Scotia, B3J 3P7

www.gov.ns.ca/energy

General Inquiries: 902-424-4575

Nova Scotia Utility Review Board

1601 Lower Water St., Suite 300

Halifax, Nova Scotia, B3J 3P6

General Inquiries: 902-424-4448

Provincial regulators

CONTINUED

Canada Nova-Scotia Offshore Petroleum Board
6 th Floor, TD Centre
1791 Barrington Street
Halifax, Nova Scotia, B3J 3K9
www.cnsopb.ns.ca
General Inquiries: 902-422-5588

> **NUNAVUT**

Department of Sustainable Development
P.O. Box 1000, Stn. 1100
Iqaluit, Nunavut, X0A 0H0
www.gov.nu.ca/sd.htm
General Inquiries: 867-975-5925

Department of Public Works & Services
P.O. Bag 1000, Stn 600
Iqaluit, Nunavut, X0A 0H0
www.gov.nu.ca/pws.htm
General Inquiries: 867-975-5400

> **ONTARIO**

Ontario Energy Board
2601 - 2300 Yonge St.
P.O. Box 2319
Toronto, Ontario, M4P 1E4
www.oeb.gov.on.ca
General Inquiries: 416-314-2455
Toll Free: 1-877-632-2727

Ontario Ministry of Natural Resources
Whitney Blk., 99 Wellesley St. W
Toronto, Ontario, M7A 1W2
www.mnr.gov.on.ca/MNR
General Inquiry 416-314-2000
French Inquiry 416-314-1665
Toll Free (Eng): 1-800-667-1940
Toll Free (Fre): 1-800-667-1840

Provincial regulators

CONTINUED

> **PRINCE EDWARD ISLAND**

Island Regulatory and Appeals Commission

Suite 501-134 Kent Street

P.O. Box 577

Charlottetown, Prince Edward Island, C1A 7L1

www.illac.pe.ca/main.asp

General Inquiries: 902-892-3501

Toll Free: 1-800-501-6268

Department of Development & Technology

Shaw Building, 5th Floor

105 Rochford St.

P.O. Box 2000

Charlottetown, Prince Edward Island, C1A 7N8

www.gov.pe.ca/development/index.php3

General Inquiries: 902-368-4240

Department of Agriculture and Forestry

5th Floor, Jones Building

11 Kent Street

P.O. Box 2000

Charlottetown, PEI, C1A 7N8

www.gov.pe.ca/af/index.php3

General Inquiries: 902-368-4880

>

QUEBEC

Régie de l'énergie

800, Place Victoria, bur. 255

Tour de la Bourse

Montreal, Quebec, H4Z 1A2

www.regie-energie.qc.ca

General Inquiries: 514-873-2452

Toll Free: 1-888-873-2452

Provincial regulators

CONTINUED

Ministère des Ressources naturelles
5700, Quatrième Avenue Ouest, B302
Charlesbourg, Quebec, G1H 6R1
www.mrn.gouv.qc.ca
General Inquiries: 418-627-8600
Toll Free: 1-866-248-6936

> SASKATCHEWAN

Department of Industry & Resources
Bank of Montreal Building
3rd Floor, 2103 - 11th Ave
Regina, Saskatchewan, S4P 3V7
General Inquiries: (306) 787-9124
Toll Free: 1-800-265-2232

> YUKON

Department of Energy, Mines & Resources
400 - 211 Main St..
P.O. Box 2703
Whitehorse, Yukon, Y1A 2C6
www.emr.gov.yk.ca
General Inquiries: 867-667-5466
Toll Free: 1-800-661-0408 ext. 5466 (in Yukon)

Natural Resources Canada
225 - 300 Main St.
Whitehorse, Yukon, Y1A 2B5
General Inquiries: 867-667-3950

APPENDICES



APPENDIX E

Provincial one call centres

The purpose of a One Call Centre is to provide information that will help to prevent damage to buried facilities, like pipelines and utility lines. Landowners who are planning to excavate for fenceposts, planting trees, installing pools and decks should call before undertaking these or any similar types of activities.

The Customer Service representatives at the call centre will take the necessary information regarding your excavation plans and will notify those companies with underground facilities in your area. There is no charge to the excavator for this service. The companies will determine if they have buried facilities at your excavation site and, if necessary, will locate and mark their facilities before you dig.

> **ALBERTA**

Alberta One Call Corporation

1-800-242-3447

www.alberta1call.com

> **BRITISH COLUMBIA**

BC One Call

1-800-474-6886

www.bconecall.bc.ca

> **ONTARIO**

Ontario One Call

1-800-400-2255

www.on1call.com

> **QUÉBEC**

Info-Excavation

1-800-663-9228

www.info-ex.com

Canada