

The Hearing Process

The New Brunswick Energy and Utilities Board considers many of its matters using a public hearing process. This begins with the filing of an application before the Board, and will often finish with an oral hearing before a panel of Board members.

The process leading to an oral hearing may take a number of months, and the hearing itself may last several days, depending on the complexity of the case and the number of parties involved. At its conclusion, the Board panel will deliberate on the evidence and arguments before issuing a decision in both official languages.

This guide tells you what to expect when participating in or observing a public hearing of the New Brunswick Energy and Utilities Board.

Steps Leading to an Oral Hearing

Once a proceeding is commenced, the Board publishes a notice of a pre-hearing conference, when a schedule leading to the oral hearing is established. The oral hearing is also scheduled at this time. The schedule is posted to the Board's website.

Much of the evidence considered by the Board comes from pre-filed written evidence which is filed well in advance of the oral hearing. This includes applicant and intervener evidence.

All parties and the Board's staff may submit written questions, or interrogatories, concerning the pre-filed evidence of the other parties. Interrogatories and responses must be filed in accordance with filing schedule deadlines.

If a party is not satisfied with a response to an interrogatory, that party may apply to the Board by Notice of Motion. At the motion hearing, the Board will consider whether to require a full and adequate response from the responding party.

The Oral Hearing

Oral hearings of the Board are usually held before a panel of three Board members, one of whom acts as chair of the panel. The panel chair directs the hearing process, which is conducted in a manner similar to a court hearing. Witnesses giving oral testimony are required to take an oath or solemn declaration. Most oral proceedings are recorded and transcribed.

Hearings are normally held before a panel of three Board members, but in some cases, all five Board members may form the panel.

Many of the Board's hearings are held in the Board's hearing room in Saint John. In cases involving many participants, the hearing will take place at a larger venue, such as a conference facility. Simultaneous translation services are provided in appropriate cases.

Because most evidence is pre-filed, witnesses or witness panels are presented in order to allow the other parties and Board counsel to cross-examine on the content of the evidence, or on any relevant matter. The

Board panel may also direct questions to witnesses, following cross-examination. Any written evidence may be displayed on monitors throughout the hearing room.

A party may request that a witness be declared as an expert. The chair will allow parties to examine the proposed expert and to make any objections to qualifying the witness. The chair will decide whether to declare the witness as an expert, and if so, in what area of expertise.

Expert witnesses are often called upon by parties to provide opinions on a specialized subject matter.

The hearing usually proceeds in the following order:

1. The panel chair will explain the purpose of the hearing and will introduce the other members of the Board panel. The chair will ask the parties and their representatives to identify themselves for the record.
2. Any preliminary matters are considered.
3. The applicant presents its case, by presenting a series of witnesses or witness panels for cross-examination by the other parties. This is done in order of precedence (determined alphabetically), then by the Public Intervener, and finally by Board counsel.
4. The first intervener, in order of precedence, presents its case, also by presenting a series of witnesses or witness panels for cross-examination on its pre-filed evidence.
5. This is followed by the presentation of the cases of other interveners, in the same manner as for the first intervener. The Public Intervener is the last intervener to present.
6. The applicant may present rebuttal evidence, which is limited to those issues raised in the evidence presented by the interveners.
7. Intervenors and Board counsel may cross-examine on the applicant's rebuttal evidence.
8. The applicant will present its closing submissions, followed by any questions from the Board panel.
9. Intervenors, in order of precedence (the Public Intervener presenting last), will present closing submissions, each followed by any questions from the Board panel.
10. The applicant may present a rebuttal submission, limited to matters raised for the first time in the closing submissions of the interveners. This may be followed by questions from the Board panel.
11. After confirming that the hearing record is complete, the panel chair will conclude the hearing.

Further information about the hearing process is contained in Rule 5 of the Board's *Rules of Procedure*.

Contact Information

Phone: 506-658-2504

Website: www.nbeub.ca

E-mail: general@nbeub.ca

Address: 15 Market Square

Suite 1400

P.O. Box 5001

Saint John, N.B.

E2L 4Y9