

Section 10

Public Hearings and Regulatory Board Processes



10. Public Hearings and Regulatory Board Processes

If there are concerns about a project that cannot be addressed through negotiation or the alternative dispute resolution process, the AER may hold a public hearing to explore the concerns and make a decision to approve, to approve with conditions, or to deny a project. If the issue is around compensation, a hearing may be held by the Land and Property Rights Tribunal. If the approval is related to pipelines that cross provincial or national borders, the Canada Energy Regulator may hold a hearing. As each regulatory body has different mandates and considerations for participation, this section outlines the general hearing process for each and who may participate in these hearings.

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It is important to distinguish between the roles of the Alberta Energy Regulator (AER), the Alberta Land and Property Rights Tribunal, and the Canada Energy Regulator.

The AER provides all permits, approvals or licences for energy resource activities in Alberta such as a licence for an operator to drill a well, construct and operate a pipeline, or carry out other energy projects. Any concerns or objections to a project may be brought to the attention of the AER through a pre-application concern or a statement of concern.

Formerly, appeals on environmental, water and public land approvals related to energy resources were heard by the Environmental Appeals Board. Since the creation of the AER, all decisions related to energy resource activities, including appeals on reclamation certificates, environmental protection orders and enforcement orders, are appealed to the AER. The AER has discretion to decide if it will reconsider any of its decisions, and if it will do so with or without a hearing.

The Land and Property Rights Tribunal has the power to grant a right-of-entry order after a company has received a licence or permit from the AER, even if the owner or occupant refuses access to the property. The Land and Property Rights Tribunal will then decide on the appropriate compensation and to whom it should be paid. All concerns about compensation must be brought to the Land and Property Rights Tribunal, as the AER does not have jurisdiction over compensation.

The Canada Energy Regulator has jurisdiction over decisions about interprovincial or international pipelines.

The Alberta Utilities Commission regulates applications for electricity generation and transmission, which is a separate process and is not discussed in this guide.

10.1 Alberta Energy Regulator hearings

A hearing is a quasi-judicial and formal public process where the company, landowners and others affected by a proposed development, and/or their legal representatives can present their views. The panel consists of one or more AER hearing commissioners and can be completed electronically or in person. The AER then makes a decision on the specific issues at hand based on the evidence.

If there are outstanding concerns about a proposed development that cannot be addressed through negotiations or the AER's alternative dispute resolution (ADR) process (section 2.4), a person who feels that they may be directly and adversely affected can submit a statement of concern to the regulator when a company has submitted their application. If the statement of concern is received before the AER makes a decision and before the filing deadline, the regulator

may recommend the file to the chief hearing commissioner for a hearing. Additionally, the AER can hold a hearing even if no one has been found to be directly and adversely affected.

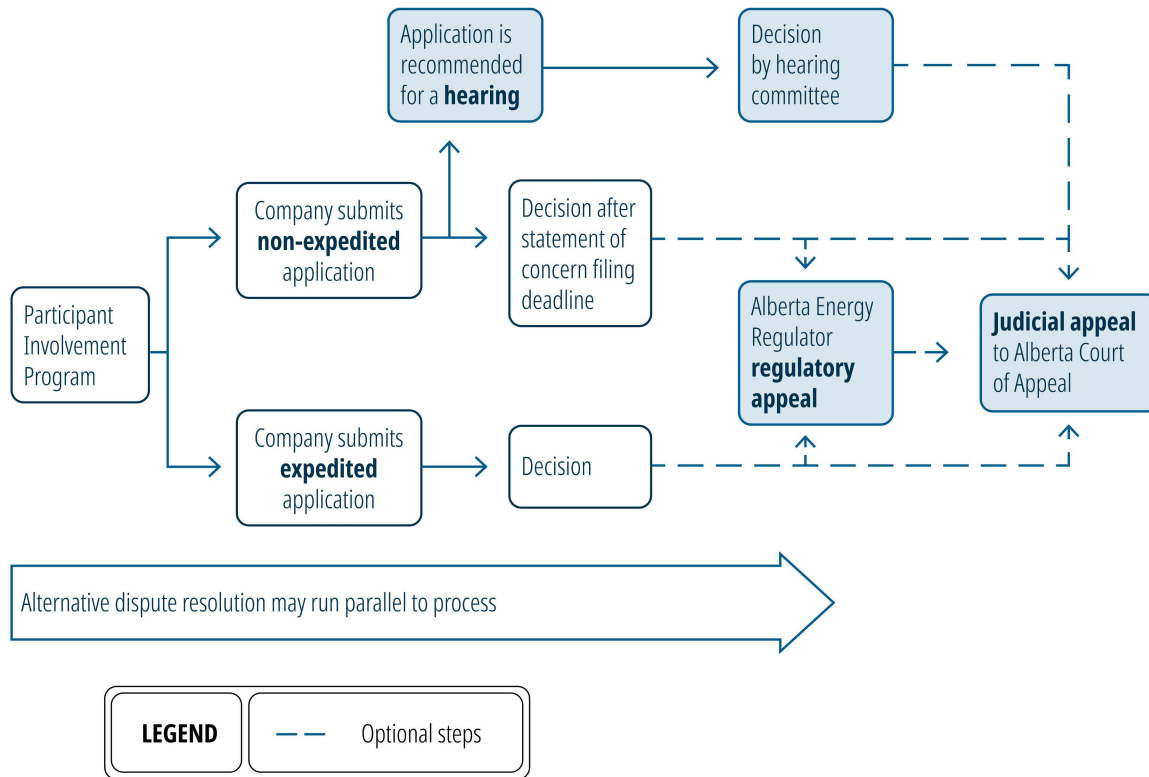


Figure 8. Regulatory process for energy development

If a hearing has been requested, the AER will encourage the parties to continue to reach a negotiated or mediated settlement, either privately or through the ADR process. Since hearings are very expensive and can delay projects, the company may be motivated to resolve concerns or decrease the number of issues that will be discussed in a hearing.

The AER has several documents outlining its hearing process. The public hearing process is set out in the AER's Rules of Practice¹ but *Manual 003: The Hearing Process for the Alberta Energy Regulator* describes the process in plainer terms.² Additionally, you can contact the AER's Hearing Services office,³ who can provide you with more information about the hearing process and may offer hearing information sessions near the area of the proposed project.

¹ Alberta, *Alberta Energy Regulator Rules of Practice*, 99/2013. https://open.alberta.ca/publications/2013_099

² Alberta Energy Regulator, *Manual 003: The Hearing Process for the Alberta Energy Regulator* (2020). <https://static.aer.ca/prd/documents/manuals/Manual003.pdf>

³ AER hearing office: hearing.services@aer.ca, or General Inquiries toll-free: 1-855-297-8311.

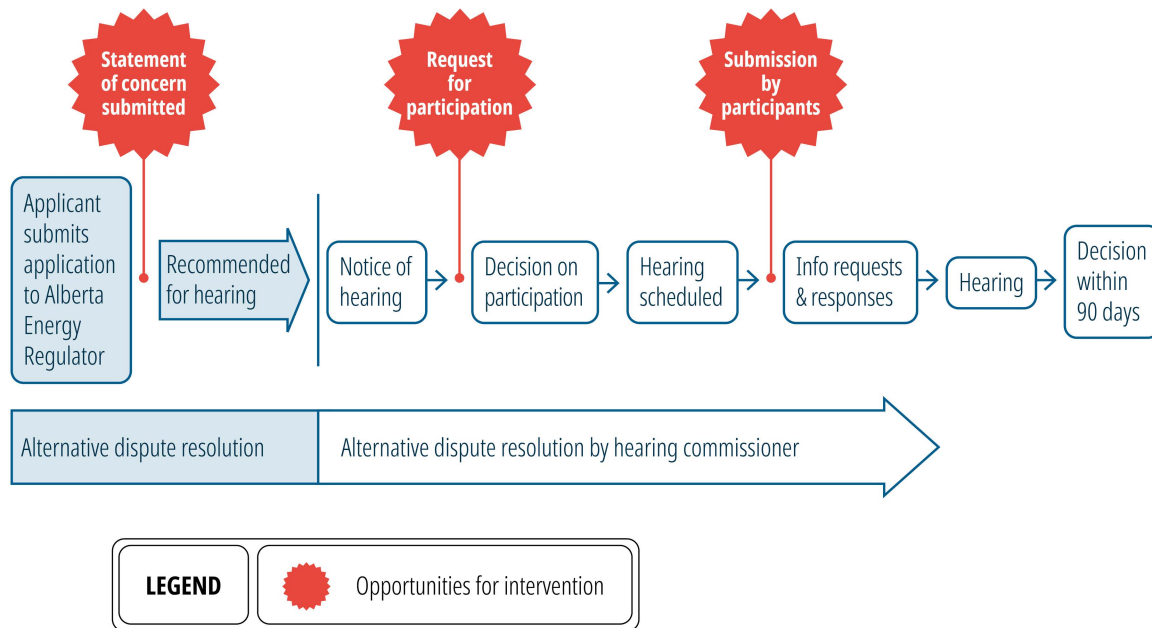


Figure 9. Typical AER public hearing process

10.1.1 When does the AER decide to hold a hearing?

The AER has considerable discretion to determine when to hold a hearing, and more discretion than its predecessor, the Energy Resources Conservation Board. The regulator is required to hold a hearing in very few circumstances. Most hearings are held when the AER receives and accepts a statement of concern about an application, or a regulatory appeal on an AER decision is requested.

Any person who feels that they may be directly and adversely affected by a decision of the AER can attempt to request a hearing by filing a statement of concern. When a project is submitted to the regulator with no outstanding concerns, it may be expedited, which allows the regulator to make a decision immediately. However, if a company is aware of outstanding concerns, they must inform the AER of those concerns and provide those who raised them with a copy of the notice of application. With outstanding concerns, the company is required to file its application as a non-expedited application, and the regulator must wait until the filing deadline described in the notice of application has passed before rendering a decision. It is important to submit your statement of concern within the timelines stated in the public notice of application or the regulator may dismiss your statement of concern. In extenuating circumstances, you may be able to request to file a late statement of concern.

As a landowner or occupant of the specific land in question, you can request a hearing by submitting a statement of concern if negotiations have failed and you are unable to reach agreement with a company about a proposed development. Anyone else who is directly and

adversely affected, such as neighbours objecting to a well, pipeline or other energy project, can also request a hearing, although they may have a harder time being considered directly and adversely affected. When the AER is reviewing the application, it will consider all the registered statements of concern before making a decision on whether to hold a hearing. However, even if a statement of concern has been submitted, the regulator can decide not to hold a hearing. Typically, the regulator will not hold a hearing if it doesn't find anyone to be directly and adversely affected or if it considers that concerns have been adequately addressed.

As the AER will only make its decision on the evidence that it has before it, it is important to explain your concerns fully and to clearly outline how you are directly and adversely affected. The AER will ask the company to respond to your statement of concern, and the company will likely try to refute your statement of concern. You may wish to provide more information to the AER about your statement of concern or to refute information provided by company. The AER may accept additional information about registered statements of concern until it makes a decision. Every person who filed a statement of concern will be provided a copy of the AER's decision.

Once the AER decides to hold a hearing and a hearing panel is assigned, a notice of a hearing will be issued. The notice will provide details on how to request to participate in the hearing. The AER's Rules of Practice allows those who think they are directly and adversely affected to request to participate. Additionally, those who think they have a tangible interest in the matter and can materially assist the AER in its decision are allowed to request to participate in a hearing, even if they are not considered directly and adversely affected.⁴

The hearing panel will decide who can participate and determine the scope of participation for those it allows to participate. Certain parties may be automatically granted participation, such as the applicant or a regulatory appeal requestor. However, automatic participation is not given to those who submitted a statement of concern. Therefore, if you want to participate in the hearing, you must submit a request to participate within the timeline given in the notice, even if you have already filed a statement of concern.

10.1.2 What to consider before a hearing

A hearing takes a lot of time and is costly to all parties involved. A hearing can last from one day to several weeks, depending on the complexity of the problems to be resolved and the number of participants. If negotiation or mediation has failed, asking for a hearing is another opportunity to have your views heard; however, you can continue negotiations right up until the start of a

⁴ Alberta, *Alberta Energy Regulator Rules of Practice*, s. 9(2)(c).

hearing. Before you decide to ask for a hearing, you may want to talk with other people in your area so you can all work together.

An AER hearing is a quasi-judicial process; while it is not essential to have a lawyer represent you, it is strongly advisable. Certainly, the company seeking approval for a project will employ a lawyer who will build the company's case and try to challenge the legitimacy of yours. The company lawyer may question your eligibility to participate, such as suggesting you may not be directly and adversely affected.⁵

If you wish to provide additional information about your request or to refute the company's information, generally an AER hearing panel will admit additional information, unless accepting that additional information is unfair to other parties or unnecessarily delays the process. In practice, hearing panels have discretion in how rules and procedures are applied. They may try to accommodate participants who are not represented by a lawyer, while ensuring that the process is fair to everyone.

Preparation for a hearing often involves a lot of technical work. Depending on the issues, you may want to draw on a range of experts. These experts might include a geologist to review drilling plans, someone to critique the gas emission modelling work conducted by the company, an engineer to examine the specifications for the design and materials to be used in constructing a pipe or casing, and a medical person to review the potential impacts of a sour gas release.

Most experienced lawyers will know qualified experts, and some will provide up-front coverage of costs for you. However, you may also want to look at previous AER hearing decisions to get an idea of the type of evidence presented at a hearing.⁶

You should contact knowledgeable lawyers and experts in the field before you apply for a hearing, so you know the costs involved and whether the experts you wish to hire will be available if the AER decides to hold a hearing. When discussing your case with these individuals, be clear that you are only inquiring, and that you are not engaging their services until it is certain that the AER will hold a hearing. Also, reach an understanding up front about the rates and terms of payment.

Where possible, engage these professionals on a contingency basis, where you agree to apply for participant funding and will pay reasonable fees if costs are awarded to you by the AER. Many professionals will agree to this if it is clear that you are a "directly and adversely affected" party and have a valid case. Some people may also agree to work for lower rates that reflect a

⁵ Although the example is from 1999, see *EUB Decision 99-16* on Canadian 88 Energy Corp.'s application for a critical sour gas well in Lochend Field. The company challenged the rights of interveners living in the emergency response zone. <https://www.aer.ca/documents/decisions/1999/d99-16.pdf>

⁶ AER, "Decisions." <https://www.aer.ca/applications-and-notice/application-status-and-notice/decisions>

contribution to the “public interest,” or ask only that you reimburse out-of-pocket expenses if participant funding is not granted. You can also negotiate directly with the company to ask them to pay reasonable costs or ask the AER for an advance costs award. Without establishing this understanding from the start, you may be exposed to costly professional fees.⁷ See section 10.1.8 for more details around hearing and participant costs.

10.1.3 Filing a statement of concern

If negotiations have failed and you want the AER to formally address your concerns after the company has submitted their application, the next step is to submit a statement of concern to the AER about an application or project.⁸ It is important for you to submit a statement of concern at this stage of the process or your concerns will not be considered when the AER makes a decision on the application.

When submitting a statement of concern, you need to concisely explain why you believe you are both directly and adversely affected by the regulator’s decision, the nature of your objection to the application, and the outcome you advocate for.⁹ You need to include other relevant details, such as your contact info and your location relative to the proposed project.

It is important to submit your statement of concern within the filing period and carefully make your case as to why you are both directly and adversely affected. The AER must consider all statements of concern that it accepts when making a decision on an application and determine if a hearing is necessary. You should review recent participatory and procedural decisions that are listed on the AER website, as they will give you a good sense of how the AER decides who is directly and adversely affected, what concerns they will address, and what information is useful to the AER when deciding to hold a hearing.¹⁰ Currently, the AER has a fairly narrow interpretation of who is directly and adversely affected, and typically does not include people who don’t live or own the land where the project will be located, or who cannot establish that they are negatively impacted.

The types of concerns that might be raised include potential impacts on air quality and groundwater and surface water quality, noise, waste, risk of emergency blowouts, and concerns

⁷ One hearing into a proposed well near Calgary resulted in more than \$54,000 in legal fees and \$61,500 in expert fees, although most hearings are not so costly. See Energy Resources Conservation Board, *Energy Cost Order 2013-002: Bernum Petroleum Ltd., Applications for One Facility Licence and Two Well Licences*. <http://www.aer.ca/documents/orders/cost-orders/ECO2013-002.pdf>

⁸ Notice of applications are found on the AER website at <https://www.aer.ca/applications-and-notice/application-status-and-notice/notice>.

⁹ Alberta, *Alberta Energy Regulator Rules of Practice*, s. 6(1).

¹⁰ AER, “Participatory and Procedural Decisions.” <https://www.aer.ca/applications-and-notice/application-status-and-notice/decisions/participatory-and-procedural-decisions>

about conservation and reclamation issues. However, it's not enough to simply raise a concern; you must explain how you will be directly and adversely impacted based on your concern. For example, it may not be enough to say you are concerned about an emergency blowout. But if you are required to evacuate through an unsafe zone in the event of an emergency, your statement of concern is more likely to be considered. You shouldn't assume that the AER will have this information unless you provide it in your statement of concern. The AER considers each case on its own merits when it decides whether a hearing is required and does not work on precedent. Be sure to provide all the legitimate arguments you can and give as much detail as possible. Make it as easy as possible for the AER to follow your arguments by putting each specific concern about an application in a separate, numbered paragraph.

Calling the regulator does not count as submitting a statement, as it must be in writing. You must submit your statement before the date specified in the notice (the time for comment can be as short as 10 days or as long as 30 days). In some cases there is no time set, such as when the project is filed as an expedited application (also known as a routine application). In these cases, the AER may make a decision on the application immediately. When the project is filed as a non-expedited (or non-routine) application, the AER must wait for the period for filing a statement of concern to pass before they will approve a project. Companies are allowed to file an expedited application if they do not require regulatory leniency and if there are no outstanding concerns at the time of application.¹¹ If the regulator does not receive any statements of concern, they are very unlikely to hold a hearing. If the regulator has already decided on an application, then they can't consider a statement of concern, so it is important to submit your statement as soon as possible.¹²

The regulator has considerable discretion to hold a hearing, and there are very few instances where the regulator is required to hold a hearing. Additionally, under the AER's enabling legislation, those who are directly and adversely affected do not have a formal right to a hearing. Therefore, you need to make your case for a hearing as strong as possible by being as specific as possible and presenting all the main arguments in your statement of concern. However, if the regulator decides to hold a hearing, according to the Responsible Energy Development Act, you may be entitled as a directly and adversely affected person to be heard at the hearing.¹³

¹¹ Exceptions, including routine applications, are described in the *Alberta Energy Regulator Rules of Practice*, s. 5.2(2).

¹² Alberta, *Alberta Energy Regulator Rules of Practice*, s. 6.2(1)(c).

¹³ In accordance with section 9.1(3) of the *AER Rules of Practice*, the regulator may refuse to allow you to participate if they find your request to participate frivolous, vexatious, an abuse of process, or without merit; or if you haven't demonstrated that you will materially assist the process, have a tangible interest in the manner, not unnecessarily delay the hearing, or not repeat and duplicate evidence. The regulator may also refuse for any other reason.

Any statement of concern you submit will be publicly posted on the AER website, so you should not include personal, medical, financial, or otherwise confidential information in your statement. If it is important that the AER consider your personal private information, you can request that information be held confidential. However, it may be enough for you to describe the information and offer further details if necessary. You don't have to prove you are directly and adversely affected for the AER to consider your statement of concern, just that you may be directly and adversely affected.

10.1.3.1 Notice of a hearing and requesting to participate

If the AER decides to hold a hearing, the branch of the AER that would approve the application forwards the file to the chief hearing commissioner. The chief hearing commissioner will send a letter to people who have filed statements of concern, advising them that the file has been sent to the hearing commissioner's office.¹⁴ A hearing panel will be assigned to the file, and if considered beneficial, a second panel will be assigned to conduct an ADR process.¹⁵ The hearing panel and the ADR panel work separately, to avoid unduly influencing the hearing process if it proceeds.

Once the hearing panel believes the matter is ready to proceed to a hearing, it will issue a notice of a hearing. The notice will be sent to all those who submitted a statement of concern and to all those listed in the application, and will be posted on the AER's web site.¹⁶ Additional information and documentation will be posted on the AER's public record system for hearings.¹⁷ The notice will outline pertinent details about the hearing, such as the subject of the hearing, where to see copies of the relevant application documents, and how to request to participate.

Even if you have submitted a statement of concern for the original application, you must submit a request to participate, also known as a written submission, within the time laid out in the hearing notice. You should submit:

- a copy of your statement of concern (or an explanation as to why you didn't file a statement of concern)
- an explanation of how you are directly and adversely affected by the decision of the AER

¹⁴ This is not a notice of a hearing, which will be announced at a later time.

¹⁵ This ADR differs from earlier stages of ADR, in that it is conducted by hearing commissioners. If ADR had been conducted before the file was sent to the chief hearing commissioner, then some AER staff from the previous ADR process may be included.

¹⁶ AER, "Notices."

¹⁷ Almost all hearing materials will be posted on this system. Sometimes you may see materials for a potential hearing that has not had a notice of hearing issued. AER, "Hearings – Public Record System."
<https://apps.public.aer.ca/hearing/>

- the outcome of the application that you advocate for
- how you intend to participate in the hearing
- evidence of your efforts to resolve the issues that you are bringing up in the hearing

If you are representing a group or association, you should explain the nature of your membership with that group. See the AER's Rules of Practice for everything you are expected to include to ensure that your concern is accepted by the regulator.¹⁸

If you are not considered directly and adversely affected, you can still apply to participate in a hearing. For example, landowner groups or residents who live outside of a notification zone may be granted participation status. When applying, you need to carefully explain the nature of your interest and why you should be allowed to participate. Additionally, you need to elaborate on how your participation will materially assist the hearing panel to make its decision, what tangible interest you have in the subject matter, and how your participation won't delay the hearing or duplicate evidence of the other parties.¹⁹ The panel has the ability to grant partial participation and may limit your participation to an electronic submission or determine the issues you are allowed to speak to.

Even if you did not submit a statement of concern, you may still be allowed to participate. It is best to respond to the notice of hearing and make a written submission. If you did not submit a request to participate, you can still attend the hearing; however, you will not be permitted to submit any evidence or make a submission.

Before preparing and submitting your request, it is useful to review the Alberta Energy Regulator Rules of Practice and *Manual 003: Participant Guide to the Hearing Process*. The rules set out the key steps that you must follow in preparing and submitting a request and what the regulator will consider in deciding on a hearing. The manual was written to assist participants in AER hearings. Additionally, you can contact the Hearing Services office or attend an information session if you are unclear about the process.

10.1.4 The pre-hearing

Once the AER decides to hold a hearing, it may schedule a pre-hearing. A pre-hearing sorts out details such as the date, time and place of the hearing, submission deadlines, and whether an information request is necessary, and will determine the time available for each party to present evidence and cross-examine at the hearing. It will also determine the procedures to be used, and make arrangements for the exchange of exhibits or submissions before the hearing itself begins.

¹⁸ AER Rules of Practice, s. 9.

¹⁹ AER Rules of Practice, s. 9.

The AER tries to avoid postponing hearings to avoid undue delays for all parties, but if you are concerned about the timing or any other process, you can make a written request to the hearing panel outlining your concerns and your proposed alternatives. If, for example, you do not think there is enough time to get expert witnesses by the date scheduled for the hearing, you could ask for the hearing to be set for a later date.

At a pre-hearing, the AER may encourage participants to join with other local interveners to prepare a joint submission. They will also discuss costs and how to submit a request for advance costs. The AER can choose to hold a hearing electronically (submitting files online), or orally (in person). If the hearing is done in person, the AER will usually plan to hold it as close to the project and participants as possible. Following the pre-hearing, the AER will send all those who attended a written memorandum of decision about the issues dealt with at the pre-hearing.

10.1.5 Submissions and preliminary steps in the AER hearing process

Usually the AER hosts a hearing information session, which explains the process and allows participants to ask questions. Additionally, the AER may schedule a pre-hearing to discuss details of the process and address scheduling and logistical items. The AER will send a letter to all hearing participants with a schedule for making submissions to the hearing panel.

Before you prepare your submission, you should review the hearing materials, which are the documents the hearing panel uses to make its decisions. These include all the application materials, relevant hearing correspondence, and submissions. Once the notice of hearing is issued, the applicant is required to provide a copy of the hearing materials to anyone who requests it. You can also contact Hearing Services who can assist you to get a copy of the hearing materials.²⁰

For examples of a submission, statement of concern, and request to participate, see Appendix 2 of *Manual 003: The Hearing Process of the Alberta Energy Regulator*.

As soon as you know there will be a hearing, you should start preparing your written submission. A written submission is the detailed description of the argument you will be presenting to the AER during the hearing and is different than the request to participate and a statement of concern. This document should contain the following elements:

²⁰ AER Hearing Services, hearing.services@aer.ca

- The outcome of the application that you advocate for. At this point, you should indicate whether you are averse to (you oppose any approval), non-averse to (you are not necessarily opposed to an approval but you have issues that you think the AER should consider in making its decision), or in support of the project.
- Reasons why the AER should choose the outcome you are advocating for.
- The facts you plan to prove or rely on in presenting your argument to the AER panel.
- Details about the extent of testimony and any expert reports or evidence you will be including.
- A list of witnesses that you intend to provide evidence at the hearing.²¹

It is very important in your submission to carefully outline all the evidence or information you want to include in the hearing, as hearing commissioners will only consider information in the hearing itself. If you plan to engage a lawyer or other experts, you should contact them immediately to tell them when the hearing will be and arrange to hire them. If you think the hearing date does not provide enough time for you and your experts to prepare your case, you can ask the hearing panel to postpone the hearing date. The AER decides each case on its merit, weighing the arguments for postponement against the wish of parties that want to proceed as soon as possible.

You may also want to submit a request for advance payment of participant funding (section 10.1.8).

10.1.6 Evidence to submit at a hearing

The evidence that you, your lawyer or your experts submit will depend on the nature of your objections. It is advisable to get as much relevant evidence as possible and to provide detailed information to back up your argument. You may want to ask your experts to re-evaluate information submitted by the company.

Remember that the hearing panel can only make its decision based on the information on the record. This includes the hearing record (application materials and submissions of all parties) and the transcript of the oral hearing. The hearing panel must make its decision based on the current regulatory framework such as the legislation, regulatory requirements, and government policy. You or your lawyer should understand the framework so you can understand what the panel needs to consider and provide evidence and argument to persuade the panel that your desired outcome is consistent with the regulatory framework and the best outcome. Past AER

²¹ Alberta, *Alberta Energy Regulator Rules of Practice*, s. 9.2.

decisions are available on the AER website and show what evidence previous hearing panels have found valuable, or not.

The types of issues that the AER deals with during a hearing and that may be relevant for your case include those listed below:

- the need for a well, pipeline or other facility
- the specific location of a well
- flaring and air quality
- potential hydrogen sulphide release rate, in the case of a sour gas well or pipeline
- drilling, completion and production considerations for a well
- public safety risk assessment
- emergency response plans
- inadequate notification or public consultation
- access roads
- adverse land-use impacts
- corrosion of pipelines
- the future integrity of a pipeline system that has already shown corrosion and leaks
- reclamation and remediation certificates
- water licences
- potential for cumulative health and environmental impacts from multiple sources on a region or localized area (however the scope of hearings is usually narrower)

Be sure to outline your specific concerns (e.g., risks to your family, livestock, water or soil quality). Pictures showing the proximity of your home, livestock or outbuildings to the proposed facility will help the AER visualize your situation and understand why you are concerned. If appropriate, support your claims by providing health records of individuals who are asthmatic or suffer any ailment that might be aggravated by the proposed operations. If you are submitting personal and private information that you do not wish to be made public, you can make a confidentiality request.

You may want to include evidence about a company's past record and can ask them for their compliance record.

Information about AER closure or abandonment orders, environmental protection orders, or other enforcement decisions are available on the AER website,²² and by contacting the AER inquiries line. If you are looking for information on reclamation certificates, environmental protection orders, or anything issued under the specified enactments (see glossary in Appendix D), you may also contact Alberta Environment and Protected Areas for any decisions prior to the creation of the AER in 2013. The ministry also has an enforcement search tool for enforcement records prior to the transfer of jurisdiction to the AER.²³

If you cannot obtain information about a company from the company itself or by asking the appropriate person at the AER or Alberta Environment and Protected Areas, you may want to try getting it through an Access to Information request.²⁴

If you are concerned about air quality, you might want to hire an expert to critique the company's emissions modelling data for gases and other contaminants that can be emitted from flares. It is important to look at both the maximum and average values of gas emissions and to compare the predicted values with the *Alberta Ambient Air Quality Objectives and Guidelines*.²⁵

Dispersion modelling is especially important for sour gas wells and is one of the main assessment tools used to design an emergency response plan for a well or other sour facility. Modelling requires information on the hydrogen sulphide (H₂S) content of the gas and the release rate expected from the well. The modelling should consider the frequency and strength of prevailing winds (based on information from the nearest meteorological station) and the local topography because pure H₂S is slightly heavier than air and the sour gas may concentrate in hollows. The output is a prediction of the concentration of H₂S at various distances from the source, normally under worst-case conditions. If your independent expert finds that the modelling is unsatisfactory, you can request the company to modify its modelling or, if funds are available, get your expert to create their own model.

If you are concerned about the possible impact on your water supply, you should get your well tested and submit that information at the hearing to provide baseline evidence (section 7.4.1). If the safety hazard created by truck traffic is a concern, you may want to include details on the number and times that school buses, pedestrians or cyclists use the same road.

²² The Compliance Dashboard is updated daily and can be searched by company name. AER, "Compliance Dashboard." <http://www1.aer.ca/ComplianceDashboard/index.html>

²³ Alberta, "Historical environmental enforcement search." <https://www.alberta.ca/lookup/environmental-historical-enforcement-search.aspx>

²⁴ Alberta, "Access to Information Act (ATIA)." <https://www.alberta.ca/access-to-information-act>

²⁵ Alberta Environment and Protected Areas, *Alberta Ambient Air Quality Objectives and Guidelines* (2024). <https://open.alberta.ca/publications/alberta-ambient-air-quality-objectives-and-guidelines>

Remember that the AER cannot deal with issues of compensation; they must be brought before the Land and Property Rights Tribunal (section 9.3).

It helps to offer the AER ideas as to how a particular issue could be resolved or mitigated to an acceptable level. Remember that, while the AER has the responsibility to impartially weigh the various points of view in rendering its decision, the AER's mandate is to allow for hydrocarbon development. The regulator will seek to permit the development to proceed while lowering the risk to public health and the environment as much as “practically” possible, especially when these activities meet existing AER regulatory requirements and are consistent with government policy. If you believe that a project should not proceed under any circumstances, then you should tell the AER this, and you will need to present your best arguments as to why the benefits do not outweigh the risks for this result. However, if you are seeking higher safeguards for health and environmental safety, then describing possible means to do this gives the AER ways to resolve the dispute that meet the needs of all parties.

10.1.7 The hearing

Once the formal hearing begins, a panel of one or more AER hearing commissioners listens to the views and arguments of all parties. The process begins with opening remarks and dealing with any preliminary matters. After opening remarks, they will hear first from the company (always referred to as “the applicant”). The applicant will usually have a witness panel that will speak to and be able to answer questions about their evidence. Then other participants can question the applicant or witness panel, as can AER staff and hearing panel members. Following this, the other participants will have the opportunity to present their own cases and witnesses in turn. After each participant has presented their arguments, the applicant is given an opportunity to cross-examine. After each party has presented their position and been cross-examined by the other parties, the AER may ask additional questions of the other parties. Once all participants have presented their evidence and the cross-examination is completed, the parties present their final arguments. The AER will then adjourn the hearing to deliberate on its ruling. The AER requires that all evidence presented in the hearing process must have been provided according to the schedule of submissions to the hearing; new evidence introduced late in the hearing process may not be permitted. For more details about each step in the hearing, see *Manual 003*.

The AER may take several weeks and up to 90 days to reach a decision. This will then be published as a decision report. Within 90 days of the hearing, a copy of the decision document will be sent to those who participated in the hearing, or to their lawyer, and be published on the AER website. If a hearing has been completed, the AER's decision is final and the opportunity to appeal is very limited.

AER hearings are transcribed by a court reporter and official transcripts of current hearings are available through the AER website.²⁶ Reviewing transcripts of previous hearings may be helpful for a party or a lawyer preparing to cross-examine a company. If you have to purchase a transcript, you can include this in your cost claim.

10.1.8 Funding and participant costs

Hearing participants can apply for costs to compensate them for the expenses they incur when preparing for, and participating in, a hearing before the AER. The AER may award costs to anyone who it allows to participate in a hearing. The Rules of Practice outlines a number of factors that it may consider when deciding whether to grant costs, and it would be beneficial for you to know what the AER may decide to cover.

Many of the considerations are different from the cost considerations of the Energy Resources Conservation Board (the AER's predecessor), which focused on the type of contributions participants made, the usefulness of their evidence and participation, and their willingness to cooperate with other participants. The AER has many new considerations available, such as whether the participant was willing to attend an alternative dispute resolution meeting or the extent of their efforts to resolve issues with the applicant beforehand. Notably, there is an emphasis that the regulator consider if there is a compelling reason for the participant to bear their own costs, as well as whether the participant has made an adequate attempt to use other funding sources.²⁷

Full details about applying for costs are set out in AER Directive 031: REDA Energy Cost Claims, including the different cost claim forms that are necessary to complete.²⁸ As Directive 031 explains, the costs have to be:

- reasonable and directly related to the hearing
- actual expenditures incurred and paid out of pocket by the participants or, in some cases, other costs for which there was no actual out of pocket expense (such as an honorarium for participation in a hearing)
- properly documented, with receipts for all costs incurred

The AER may award costs incurred when the hearing participants engage a lawyer or a consultant who helps provide evidence for the hearing. Additionally, it may consider other

²⁶ AER, "Current Hearings and Transcripts." <https://www.aer.ca/applications-and-notice/hearings/current-hearings-and-transcripts>

²⁷ Alberta, *Alberta Energy Regulator Rules of Practice*, s. 58.1.

²⁸ AER, *Directive 031: REDA Energy Cost Claims* (2016). <https://www.aer.ca/regulations-and-compliance-enforcement/rules-and-regulations/directives/directive-031>

associated costs of a hearing such as accommodations, transportation and meals, meeting room rentals, and long-distance phone calls.²⁹ The AER may award basic participant costs based on an honorarium of \$100 per half day of a hearing. Merely attending the hearing does not qualify for costs, but a participant who takes an active part in a hearing, e.g., by giving evidence and being cross-examined, may claim for time spent at the hearing, as outlined in Manual 003 and Directive 031. This may also include public interest groups or associations if the hearing panel has granted them participation in the hearing.

The AER will usually only cover costs incurred after a notice of hearing is given, but there may be a situation where the AER considers it reasonable for some costs to accrue before a hearing notice is given.³⁰ Additionally, the AER may also grant advance funding to enable you to engage the experts you need for a hearing. If you submit such a request, you will need to provide a detailed estimate of the costs you expect to incur and, if appropriate, why this information is needed for the hearing. You will still have to prove afterwards, with receipts, that those costs were actually incurred. Section 4 of Directive 031 outlines interim costs in more detail.

The applicant is responsible for covering the costs of the participants. The AER does not review every cost claim submitted to them after a hearing. When a cost is in dispute between the participant and the applicant, then the AER will review that aspect in dispute. Otherwise, the AER will expect the parties to act in good faith, but can audit a cost claim at any time at its discretion.³¹ After the AER has awarded costs, the applicant must pay the participant within 30 days, or they will be subject to enforcement measures by the AER.³²

For more details on claimant costs, please refer to Directive 031 to help you interpret the section of the AER Rules of Practice that deals with costs. It is also useful to review previous cost order decisions made by the AER to better understand the criteria used to determine what is acceptable.³³

10.1.9 Post-decision follow-up

Following a hearing or other decision, the AER requires the company to comply with the decision. Conditions set in the hearing decision are also incorporated into the company's licence or permit. In some cases, a company may make commitments to interveners that are not specifically spelled out in the licence or permit.

²⁹ AER, *Manual 003*.

³⁰ AER, *Manual 003*, 12.

³¹ AER, *AER Bulletin 2014-07* (March 6, 2014). <http://www.aer.ca/documents/bulletins/AER-Bulletin-2014-07.pdf>

³² AER, *Directive 031*, section 9.

³³ AER, "Costs Orders." <https://www.aer.ca/regulations-and-compliance-enforcement/orders/costs-orders>

If you have any evidence that a company is not complying with these conditions, you should bring this to the attention of the AER. The AER will then decide on the appropriate action, which will be determined by the severity of the infringement.

It is also a good idea to keep an ongoing record of any problems you experience as a result of a company's activities, even if the company is acting in accordance with its licence or permit. You then have evidence that you can submit to the AER at a later date should the company want to extend, amend or renew its activities on your land or in the area.

10.1.10 Reconsideration or legal challenge to a hearing decision

The AER's decision after a hearing is final.³⁴ You cannot appeal the actual decision to the AER if you do not agree with it. An appeal on the AER decision made by the hearing panel can only be made to the Alberta Court of Appeal on matters of law and jurisdiction.^{35,36} Any appeal must be made within one month of the date on which the decision was issued by the AER.³⁷ Sometimes several days elapse between the AER signing the decision and the actual announcement, so check the deadline carefully. Section 45 of REDA sets out exactly what is required in the appeal process. When preparing for an appeal, it can be helpful to review the transcripts of other cases that have gone to appeal.

The AER has the power to confirm, vary, suspend, or revoke any decision that it has made, which is considered a reconsideration. Should you discover new evidence not available at the time of the initial hearing, you could ask the AER to reconsider its decision, citing section 42 of REDA.³⁸ This situation, in which a hearing is held after the AER has approved a project, might arise where a company did not fully inform the public about a proposed development before applying to the AER for approval. The AER might then issue a licence or permit without realizing that there were serious public concerns. Other grounds for reconsideration include if substantial new information has come to light that is pertinent to health and safety or to environmental aspects of the approved project.

³⁴ AER, *Manual 003*, section 8.

³⁵ Alberta, *Responsible Energy Development Act*, SA 2012 c. R-17.3, s. 45.

³⁶ Decisions made without a hearing may be appealable by an eligible person, under section 36 of the Responsible Energy Development Act.

³⁷ *Manual 003*, section 8.

³⁸ Alberta, *Responsible Energy Development Act*, s. 42.

You can request a reconsideration on any AER decision made with or without a hearing. The AER rarely reconsiders its decisions, so it is important to carefully construct your case to make the best argument as to why new facts or information could have had an impact on the original decision. If the regulator decides to reconsider its decision, it can do so with or without a hearing.

10.2 Regulatory appeals for AER decisions made without a hearing

Depending on the type of approval, AER decisions that were made without a hearing can be challenged by requesting the AER to conduct a regulatory appeal of the decision. Any decision made by a hearing panel cannot be appealed to the AER, but you may submit a request for reconsideration to the AER, which could lead to a hearing (see section 10.1.10).

In addition to requesting a reconsideration, you may be able to request an appeal on a decision defined as an “appealable decision” under REDA, section 36. Your eligibility to appeal depends on the type of decision.³⁹ Examples of decisions that may be appealed if they were made without a hearing include:

- an approval or an amendment, addition or deletion of an application under the Environmental Protection and Enhancement Act
- the issuance of an environmental protection order
- the issuance of a reclamation or remediation certificate
- an amendment or issuance of an approval or a renewal of a licence that formerly was a public review under the Water Act
- any decision of the regulator under an energy resource enactment (see glossary in Appendix D)

The length of time that you have to appeal varies with each type of decision.⁴⁰ In the case of a decision by the regulator to issue an approval under the Environmental Protection and Enhancement Act (EPEA), you must appeal within 30 days of an approval being given (EPEA, section 91(4)(c)), though there are different time limits for other appeals. In the case of a

³⁹ An “eligible person” is someone who is directly and adversely affected by an appealable decision, or eligible to appeal under specific clauses of EPEA, the Water Act, or the Public Lands Act if made without a hearing. For a description of an eligible person, see REDA, s. 36.

⁴⁰ The regulatory appeal process is summarized at AER, “Regulatory Appeal Process.”

<https://www.aer.ca/applications-and-notice/regulatory-appeal-process>

Submission deadlines are provided at AER, “Request for Regulatory Appeal.” <https://www.aer.ca/applications-and-notice/regulatory-appeal-process/request-regulatory-appeal>

reclamation certificate, the company, or any person who has received a copy of the reclamation certificate, has up to a year to file a notice of appeal (EPEA, section 91). In a case where the regulator refused to issue a reclamation certificate, the company also has 30 days to appeal. The AER also deals with appeals against other AER decisions, including enforcement orders, environmental protection orders, and the designation of a contaminated site. A company is usually more likely to bring an appeal against such decisions, but a landowner may want to take part in the appeal process, to tell the AER why it should not revoke a decision or order, for example.

An appeal to the AER does not usually prevent a company from proceeding with any action allowed by the approval that is being appealed. The person appealing the decision must request a “stay” if they want a project put on hold. While the AER will consider an application for a stay, it is not automatically granted. The AER can only consider granting a stay where it is requested.⁴¹

If the regulator decides to proceed with an appeal, it will be given to the chief hearing commissioner, who will establish a panel. Alternatively, the regulator may encourage the issue to be dealt with through its alternative dispute resolution process (section 2.4.1).

10.3 Land and Property Rights Tribunal procedures and hearings

The powers of the Land and Property Rights Tribunal are set out in the Surface Rights Act and the Exploration Dispute Resolution Regulation. The process often starts when a company applies to the tribunal for a right-of-entry order because they have failed to reach agreement with a landowner before receiving an approval from the AER (section 9.3.1).

Or, once a right-of-entry order has been issued, the tribunal may hold a compensation hearing for both right-of-entry compensation and damages or an objection hearing. Both types of hearings are described in section 10.3.3. Additionally, a landowner or occupant can reopen negotiations with the company and negotiate a private surface agreement. Additionally, they can request a dispute resolution conference to resolve additional considerations, facilitated by a Land and Property Rights Tribunal member. A dispute resolution conference is similar to the AER’s ADR process and may be initiated before a hearing is scheduled.

⁴¹ Alberta, *Responsible Energy Development Act*, s. 39(2).

10.3.1 Right-of-entry orders by the Land and Property Rights Tribunal

If negotiations between a landowner/occupant and a company fail, yet the AER has decided to issue the company a licence (with or without a hearing), the company can apply to the Land and Property Rights Tribunal for a right-of-entry order after they have received an approval from the AER. As long as the AER has provided a licence, an application for a right-of-entry order is a formality, as the Land and Property Rights Tribunal will not refuse entry.

After the tribunal receives a right-of-entry application, the company must serve a copy of the application to the landowner. However, if the landowner or occupant believes they have valid objections, they can appeal to the Land and Property Rights Tribunal for a hearing. Any initial objection must be related to something other than compensation, as monetary concerns are dealt with in the next stage of the process. If no issues are raised, the Land and Property Rights Tribunal will issue a right-of-entry order no earlier than 14 days after the application has been provided to the landowner or occupant. After the Land and Property Rights Tribunal has issued the order, and if the issues haven't been settled through private negotiations, the tribunal will set a date for the compensation hearing.

When you receive a company's application for right of entry and you still have outstanding objections, you should immediately (within the 14 day window) file an objection with the Land and Property Rights Tribunal to the right-of-entry order, and ask the Land and Property Rights Tribunal to hold an objection hearing. Previous decisions from the Surface Rights Board (the tribunal's predecessor) have held that you cannot challenge the AER's decision on its technical legitimacy, but objecting to a right-of-entry order may allow you an opportunity to capture in writing additional requirements that the tribunal can include in its decisions; however, this is certainly not guaranteed.

As explained in section 9.3 of this guide, even if a landowner and company are close to reaching an agreement on entry and the amount of compensation, a landowner may request that a company obtain a right-of-entry order from the Land and Property Rights Tribunal. The tribunal will issue a right-of-entry order as requested, then issue a tribunal compensation order to formalize the amount of compensation the company and landowner have agreed to. This has mainly fallen out of practice, but remains a way for landowners to have the agreement additionally legitimized through the tribunal.

10.3.2 Types of Land and Property Rights Tribunal hearings

The main type of hearing held by the Land and Property Rights Tribunal is a compensation hearing. Compensation hearings are typically scheduled by the tribunal after a right-of-entry order has been issued if compensation is not agreed upon by the landowner and company. In the meantime, the company can start building the access road, well or pipeline. However, the company is required to pay the landowner the full entry fee and 80% of the compensation offered in the last written offer — not necessarily the last best offer — before they start operations (Surface Rights Act, section 20).

Objection hearings are rare, but if the Land and Property Rights Tribunal holds an objection hearing for a right-of-entry order,⁴² the company cannot enter the land prior to the hearing. As noted previously, the reasons for objection must not be related to compensation and should instead focus on any technical failings in a company's proposed development. Although the tribunal will not dismiss an approval, an objection hearing is an opportunity for you to seek additional conditions on the agreement.

The Land and Property Rights Tribunal may also hold proceedings to resolve a dispute between a company and a landowner/occupant about any damages done by a company, where damage has been done outside the area covered by the lease or right-of-way agreement (Surface Rights Act, section 30(1)(a)). As indicated in section 9.3.4, claims must be brought to the Land and Property Rights Tribunal within two years and the total amount of the claim must not exceed \$50,000.⁴³

Prior to any hearing by the Land and Property Rights Tribunal, there may be a dispute resolution conference facilitated by a Land and Property Rights Tribunal member, which may allow you to come to agreement on terms that are outside the jurisdiction of the Land and Property Rights Tribunal. If the parties come to an agreement through a dispute resolution conference, this agreement may be formalized by the Land and Property Rights Tribunal in a written decision.

10.3.3 The compensation hearing process

This section focuses on the compensation hearings that are held when a landowner and a company are unable to agree on compensation and the Land and Property Rights Tribunal has issued a right-of-entry order.

⁴² Alberta, *Surface Rights Act*, s. 15(5).

⁴³ If an unresolved claim for damages exceeds \$50,000, you may need to sue the company to obtain compensation. Companies may try to settle out of court. Out-of-court settlements often have a condition that the parties cannot publicly reveal the terms of the settlement.

While a hearing before the AER is a rather formal process, the Land and Property Rights Tribunal tries to make it as easy as possible for individuals to present their own case. The tribunal meets in different locations across the province,, so it will usually not be necessary to travel to the main office in Edmonton for a hearing. It is also possible to have your lawyer or a personal associate represent you at the hearing; if the representative is personal, you must fill out an Appointment of Personal Representative form and submit it to the tribunal.⁴⁴

Before the compensation hearing begins, the tribunal will hold a dispute resolution conference by telephone to see if the parties can agree on compensation before proceeding to the main hearing. If agreement occurs, the hearing process ends immediately and a tribunal compensation order can be obtained. If not, a mutually convenient date will be determined for the hearing.

At the hearing, you must tell the tribunal members why you object to the last offer from the company and why you think the compensation being offered by the company is insufficient. It is helpful to have your ideas on paper, and the tribunal does prefer a written statement. Provide the tribunal with any evidence you have, such as the value of recent land sales and copies of access agreements for similar projects with other landowners that provide greater compensation. When calculating the value for loss of use, it helps to have receipts for the costs of inputs and to document revenue from sales and your estimated net return. If the tribunal has held previous hearings in your area, it could be useful to read the tribunal decisions and perhaps use them as evidence.⁴⁵ Provide all the evidence you have, as the tribunal has to base its decision on evidence. The tribunal will request five copies of all documents — one for each of the three tribunal members, one for the file, and one for the company.

If you are unable to attend the hearing and you have no one else to represent you, you must send the tribunal your written statement 14 days in advance of the hearing or request an adjournment.⁴⁶

If construction of the well, access road or pipeline is completed before the hearing,⁴⁷ you may wish to take photographs showing the extent of any damage, although members of the Land and Property Rights Tribunal may inspect the site. The company will also provide exhibits at the hearing.

⁴⁴ Available at Land and Property Rights Tribunal, “LPRT – Forms and Resources.” <https://www.alberta.ca/lprt-forms-and-resources#jumplinks-o>

⁴⁵ Land and Property Rights Tribunal, “LPRT – Find a decision.” <https://www.alberta.ca/lprt-find-a-decision>

⁴⁶ Surface Rights Board, *Surface Rights Board Rules* (2020). <https://open.alberta.ca/publications/surface-rights-board-rules>

⁴⁷ Construction could have been started as a result of the right-of-entry order issued by the tribunal while waiting for the compensation issue to be addressed.

When the hearing is over, the tribunal will make a decision and issue the compensation order. The amount of compensation ordered by the tribunal may be more or less than the amount offered by the company. If it is less than the preliminary amount already paid by the company, the landowner will have to give back the difference.

A separate hearing is usually held for each person who refuses right of entry to a company. In the case of pipelines, however, when several people raise objections, the tribunal may request the landowners to join in one hearing as this will lead to a more efficient discussion. As an individual landowner, you may still ask for your own case to be heard separately.

For more information about the hearing process, visit the Alberta Land and Property Rights Tribunal website, or contact them via email or telephone (Appendix B). You may also wish to consult the Surface Rights Act or the Surface Rights Board Rules (which remain in effect despite the Land and Property Rights Tribunal succeeding the Surface Rights Board).

10.3.4 Cost of a Land and Property Rights Tribunal hearing

The tribunal may award costs for a compensation hearing to a specific party, not necessarily just the landowner. This depends on a number of factors, including complexity of the hearing, whether a party delayed the process, the use of lawyers, and source of costs.⁴⁸ The Land and Property Rights Tribunal may deal with the cost award at the hearing. It is thus advisable to bring any receipts and other evidence of costs and the time involved in preparing for the case to the actual hearing. Unlike the AER, the Land and Property Rights Tribunal has not published special instructions about how to apply for compensation of costs incurred.

Additionally, the Land and Property Rights Tribunal may issue a cost award for preliminary costs that occur before and outside of the hearing, even if compensation is settled between parties privately. This occurred in the case where both the company and the lessor settled on the amount of compensation for the project, but did not agree on the cost award for a landowner hiring a representative.⁴⁹ Although the Land and Property Rights Tribunal was not involved in determining the rate of compensation, it found that awarding reasonable costs associated with negotiating a private surface access agreement was consistent with the principles of the Land and Property Rights Tribunal. Particularly, awarding reasonable private costs encouraged parties to privately resolve their disputes, allowed landowners the benefit of representation, and made landowners “whole” when negotiating an agreement primarily for the benefit of companies seeking surface access.⁵⁰

⁴⁸ *Surface Rights Board Rules*, s. 31.

⁴⁹ Surface Rights Board, *Apache Canada Ltd. v Collier Enterprises Ltd.*, 2016 ABSRB 573. <https://www.canlii.org/en/ab/absrb/doc/2016/2016absrb573/2016absrb573.html>

⁵⁰ *Apache Canada Ltd. v Collier Enterprises Ltd.*, para. 32.

10.3.5 Rehearing

A landowner may ask the Land and Property Rights Tribunal for a rehearing if the damage done by the company is greater than originally expected or if they believe they have a legitimate complaint with the hearing process. For example, a rehearing might be possible in the case of a pipeline where construction was still underway at the time of the hearing and unexpected damage occurred after the tribunal's decision.

10.3.6 Appealing a Land and Property Rights Tribunal decision

Either the company or landowner/occupant may appeal a decision made by the Land and Property Rights Tribunal to the Court of King's Bench. The appeal can relate to the amount of the compensation order or to the person to whom the compensation is payable, or both (Surface Rights Act, section 26). The appeal must be made within 30 days of the date on which the compensation order was received. Section 26 of the Surface Rights Act sets out exactly what is required with respect to an appeal. It is also possible to appeal a decision made by the Court of King's Bench up to the Court of Appeal.

10.4 Canada Energy Regulator hearings

The Canada Energy Regulator (CER) regulates pipelines that cross provincial or international borders. The CER is required to hold a hearing for applications for the construction of a major interprovincial or international pipeline (known as a facilities hearing), the abandoning of a pipeline, and when there is opposition from landowners on the detailed route of an approved pipeline.

The CER may hold two hearings on a project. The first hearing is to determine whether the construction of a pipeline over 40 kilometres in length is in the public interest and to review the general route or corridor for the pipeline. The CER decides whether to provide the company with a certificate of public convenience and necessity, so this hearing is called a certificate hearing.

Once a company holds a certificate, it will plan the detailed route of the pipeline. As with provincial energy development, the company and landowner should first try to resolve all issues through direct discussions or use of alternative dispute resolution (see section 2.4.1 for the similar provincial process). If problems remain concerning the location of the pipeline or other matters (except for compensation), the CER may hold a detailed route hearing.

The CER is a quasi-judicial body and operates somewhat like a court. Its powers include the swearing in and examination of witnesses and the taking of evidence. The CER accepts written evidence prior to a hearing and allows oral cross-examination at the hearing.⁵¹

Anyone who has a legitimate interest and wants to participate in a CER hearing can apply by filing out an application to participate as either an intervenor or a commenter with the CER.⁵² The public notice for the hearing will explain how to register.

There are two ways to participate in a certificate hearing. You may be asked to submit a letter of comment, which is written testimony that contains comments on how you will be impacted, suggestions or comments on conditions of approval, and any other information that supports your comments. Otherwise, you can participate as an intervenor, which allows you to attend the oral hearing to present evidence, cross-examine other witnesses, and give a final argument. Intervenor must show that they have an interest in the results of a certificate hearing.⁵³

In a detailed route hearing, the Canadian Energy Regulator Act clearly distinguishes between people who own land that the company requires for pipeline development and people who believe that pipeline development may negatively affect their land.⁵⁴ Both groups have the right to submit a written statement of objection that describes their interest in the land and their objections to the pipeline. The purpose of the hearing is not to oppose the principle of the project, but to discuss the details and logistics of the route. The company is obligated to notify anyone who was found to have legitimate concerns of the hearing order for the detailed route hearing.⁵⁵ The CER may also allow other people who are not intervenors to present their comments.

Intervenor at a CER certificate hearing can apply for the Participant Funding Program to help cover expenses. Participants in detailed route hearings are not eligible for cost coverage under the CER's Participant Funding Program; however, the CER may direct the company to reimburse hearing costs to landowners who are directly or indirectly affected by the project.

⁵¹ Canada, *National Energy Board Rules of Practice and Procedure*, SOR/95-208, s. 36. <http://laws-lois.justice.gc.ca/eng/regulations/SOR-95-208/>

⁵² Canada Energy Regulator, "Hearing Process." <https://www.cer-rec.gc.ca/en/applications-hearings/participate-hearing/hearing-process/>

⁵³ *National Energy Board Rules of Practice and Procedure*, s. 28.

⁵⁴ Canada, *Canadian Energy Regulator Act*, S.C. 2019, c. 28, s. 201(3) and (4). <https://laws-lois.justice.gc.ca/eng/acts/C-15.1/>

⁵⁵ NEB, *Pipeline Regulation in Canada: A Guide for Landowners and the Public* (2010). https://publications.gc.ca/collections/collection_2010/one-neb/NE23-104-2010-eng.pdf

Where a right-of-way agreement has not been signed between the company and landowner, the CER can grant a right-of-entry order allowing the company immediate access to the land, although the landowner or occupant does have the opportunity to submit a written objection.⁵⁶

If the project application is approved, the CER sets and enforces conditions to ensure that the company protects the environment and ensures public health and safety. The CER audits and inspects the company's construction activities, the operation of its system, and the company's routine maintenance and monitoring procedures.

A CER decision can be appealed to the Federal Court of Canada, but the appeal is limited to a point of law or jurisdiction. An appeal must be made to the court within 30 days of the CER's decision.

Proposed pipeline projects submitted to the CER are also subject to review under the Impact Assessment Act.

⁵⁶ For information about expropriation law in Canada, see "Expropriation Law Centre."
<http://www.expropriationlaw.ca>.

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