



National Energy
Board

Office national
de l'énergie

TESTING EVIDENCE



ISSUE: TESTING THE EVIDENCE

When the National Energy Board (NEB or Board) gets an application for a new pipeline project, it's the start of the assessment process.

This process can take many forms, ranging from a process where impacted people can provide written comments, to a written public hearing or an oral public hearing.

The one thing that all of these formats have in common is a testing and challenging function. No project is approved without a comprehensive and science-based review of the

engineering specifications and potential safety impacts, the environmental and socio-economic impacts, the economic implications, and the possible impacts on Indigenous interests, including rights.

The NEB has professional staff from multiple disciplines who scrutinize the application to see if there are any issues or gaps. The NEB then requires the proponent to provide additional information, commitments or explanations until the application is deemed to be sufficiently complete to proceed to further assessment. This does not mean that the NEB accepts all of the proponent's information at this stage – it just means that the application is ready for further testing and challenge by the Board and external participants.

The Board uses the subsequent steps in the process to gather additional information it needs to make a decision or recommendation. This information comes from a variety of sources, including written questions or 'information requests' to the proponent. Depending on the project, these can range from just a few requests to thousands. It also includes information provided directly to the Board from other participants, which may support or contradict the proponent's information. These steps ensure that the proponent's evidence is thoroughly tested, the project is comprehensively assessed and all relevant information about the project and its potential impacts is available to inform the Board's decision or recommendation.

QUICK FACTS:

- All evidence regarding a project that's submitted to the NEB is assessed, tested and challenged.
- NEB hearings typically don't require oral cross-examination due to the nature of the decisions, the recommendations being made and the interests under consideration.
- NEB professional staff are fully involved in the regulatory oversight of all pipeline projects, from application, to construction, operation and eventual abandonment.

Generally, oral cross-examination is not required for an NEB hearing due to the nature of the decisions or recommendations being made. While there are diverse opinions and evidence about what the NEB's conclusions and decision should be, and what actions should be taken, NEB hearings typically do not involve issues of credibility related to factual events. Nor are fundamental issues, such as individual liberty, at stake. Other factors also have to be considered, including the legislated time limit for assessment processes, with which the Board must comply. The absence of oral cross-examination does not mean evidence is not tested or challenged – the testing and challenging is done through written questions and filing of contrary information, as well as through final argument.

Information and arguments gathered during the process allow the NEB to impose improvements to a project through conditions that mitigate impacts or enhance benefits. If the project receives approval, the proponent must comply with these conditions, as well as any requirements under the NEB Act and its regulations. The Board retains ongoing oversight over the project and can enforce compliance through a variety of methods, including inspections, audits and administrative monetary penalties.

