



National Energy
Board

Office national
de l'énergie

RECUSALS

ISSUE: RECUSALS



The NEB's main hearing room

Apprehension of Bias and Recusals

One of the cornerstones of the National Energy Board's (NEB, the Board) regulatory framework is our commitment to natural justice. Simply put, the NEB has a duty to be fair.

Generally, there are two components to the principles of natural justice and fairness. First, a party must have an adequate opportunity to be heard before a decision is made affecting their interest. Second, the decision must be made by an independent and impartial decision maker.

Independent Decision Makers

The NEB operates much like a court of law. And like any court, independent decision-making is at the core of what we do. Canadians deserve to have confidence that decisions made by the NEB are fair, impartial and in the public interest. Board Members must base their decisions on nothing but the law and the evidence that is placed on the record.

Our Board Members are bound by an array of guides, legislation, governance manuals and the principles of common law to ensure that they comply with the values of democracy, respect, integrity, stewardship and excellence. For example, the *National Energy Board Act* prohibits Board Members from investing or holding shares in energy companies. We also have guidelines on meetings with external parties. Board Members must carefully consider all contacts with outside groups or individuals in order to avoid any appearance of favoritism or bias on matters that are before the NEB. The NEB cannot be seen to pre-judge an application.

Recusals

In order to maintain public confidence, Board Members must be independent of all outside influences in their capacity as decision-makers. In fact, it's not enough for our Board Members to be independent and unbiased. They must also appear to be unbiased. When an informed person would reasonably conclude that a Board Member may be inclined

QUICK FACTS:

- The NEB has a duty to be fair.
- Board Members must not only be unbiased, they must also be seen to be unbiased.
- If a Board Member believes they may be seen to be biased, they may recuse themselves.

towards a particular point of view, there may be an apprehension of bias.

If a Board Member feels that they may be biased or that their past actions would lead someone to believe that they are biased, they may choose to recuse themselves from a particular application.

A decision to recuse is a personal decision. A Board Member must consider their own situation and make a decision about their own future involvement with the application in question. A recent example involves the three Board Members assigned to review the Energy East application.

In January, 2015, two of the three Board Members assigned to the Energy East Hearing Panel met with several leaders in Québec. One of the meetings involved a former public figure, who did not disclose that he was a consultant for TransCanada, one of the applicants for the Energy East and Eastern Mainline projects.

Although the Panel Members involved stated that these meetings were carried out with the best of intentions, the Board Members involved understood that meeting with a TransCanada consultant may cause a reasonable person to think they were biased. While the third Board Member did not participate in these meetings, he was of the view that his prolonged exposure to the other Board Members could have caused a reasonable person to believe he was also biased. Therefore, all three Board Members voluntarily recused themselves.



The NEB is committed to the principles of natural justice.