



National Energy
Board

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How to prepare for Final Argument?

2017



Outline

This presentation provides a brief overview of final argument, draft conditions, tips on how to prepare your final argument and preparing your response to another party's argument.

This presentation includes information on:

- What is Final Argument?
- How will Final Argument be conducted?
- What are Draft Conditions?
- How to prepare your Final Argument?
- How to prepare your response to the argument of others?
- Where to find more information?

What is Final Argument?

- **Final Argument:**

- is the opportunity for the Intervenors and the Applicant (Company) to present their summarized position regarding the project to the Board; and,
- can be conducted in writing, or through a combination of written and oral submissions.

- **Final Argument is where:**

- you express your views, opinions and conclusions on the project to the Board by using all, and only, the information on the public record. No new information is allowed to be introduced during final argument;
- you comment on the relevance and weight of any evidence on the record by persuading the Board that it should give less weight to some information and more to others;
- you comment on the draft conditions issued by the Board, propose modifications to the draft conditions and suggest additional conditions; and,
- persuade the Board why it should recommend to Governor in Council that the project should be approved or denied, or other relief you may seek. You should be clear as to what relief you are asking and why the facts support this relief.

How will Final Argument be conducted?

- Final Argument can be conducted in writing, or through a combination of written and oral submissions.
- Consult the Hearing Order, Procedural Directions and Hearing Schedule to get information on how and when Final Argument will occur.
- If the Final Argument has an oral component, the Board will issue an Order of Appearances. The Order of Appearances outlines in what order the parties will present their Final Argument. Usually, the applicant goes first, then intervenors provide their arguments, and then the applicant has a right of reply.

What are Conditions?

Conditions:

- Are designed to protect the public and the environment by reducing possible risks identified during the application and hearing process.
- Include measures to mitigate the risks and effects of a project.
- Are legal requirements that a company must meet:
 - before and during construction and operation;
 - during or after the abandonment of a project.
- Are monitored by the Board for compliance through various tools such as: inspections, management system audits, compliance meetings, manual or report reviews, emergency response exercise evaluations, information requests and information submissions.
- Are legally-enforceable by the Board with a range of enforcement options.

What are Draft Conditions?

- **The Draft Conditions:**
 - are conditions issued by the Board before arguments.
 - provides parties the opportunity to comment on the suggested conditions or propose additional conditions during their argument, should the Board decide to agree to a project or recommend that it be approved.
 - allows the Board to take into consideration the parties' comments to modify the conditions before they are final.
- **The issuance of the draft conditions does not mean that the Board has made a decision on whether or not to recommend the approval of the project.**

What is the process for Final Argument?

- **The process for Final Argument (written or oral) follows in general, 3 phases:**
 - **Presentation of Arguments:**
 - The Applicant (company) is the first to provide its final argument.
 - The Intervenors then present their argument according to the list of appearances.
 - **Reply to Arguments:**
 - Usually, the Board allows for a “top down - bottom up” approach which means that Intervenors may get to respond to other parties’ arguments after the last Intervenor has presented his/her main final argument.
 - More often, you should anticipate what other parties may say in argument and express your views orally on whether you may agree or not with other parties.
 - Sometimes, the Board allows a written step for such reply but it is the exception.
 - **Company Reply Argument:**
 - Finally, the company has the opportunity to provide their reply argument.

How can I prepare my Argument?

- **To prepare your Final Argument, you may want to ask yourself the following questions:**
 - What are the main points of my position regarding the project?
 - What evidence on the record supports my position?
 - What do I want the Board to do (i.e. what relief do you seek)
 - Do I want to provide comments on the draft conditions?
 - Do I want to propose additional conditions?
- **It is not necessary to comment on every aspect of the project, only those areas in the List of Issues which are important to you and relate to your interests.**

How can I prepare my Argument?

- **The following tips will help you prepare:**
 - Review relevant information on the public record, including the draft conditions.
 - Write your argument in advance and clearly state what you want the Board to do:
 - approve or deny the project, or any other relevant relief you have a position on.
 - give more or less weight to certain evidence, or
 - add, remove or modify the draft conditions.
 - Make sure your argument is organized in a logical manner and is related to topics on the List of Issues.

How Can I Prepare my Argument?

- **The following tips will help you prepare (cont'd):**
 - Base your argument on evidence that is on the record:
 - Reference the evidence you are using to reach your conclusion. References can include exhibit numbers with the Adobe page numbers, and transcript line numbers.
 - You may also refer to legislation, case law and past decisions of the NEB in your argument even though they are not on the record.
 - If you provide an oral final argument, bring a copy of all the evidence you have filed and the one you plan to use in your argument so you can refer to it as needed. No new evidence can be admitted.

In some instances, the Board will issue a template for Final Argument. In that case, review the template before preparing your Argument.

How can I prepare to respond during Final Argument?

- **To prepare your response to the argument of another party during the oral portion of a hearing, you may want to ask yourself the following questions:**
 - Who may have a position that I disagree with?
 - Can I anticipate the main points of their argument and the evidence they will use to support their position?
 - Can my response show my disagreement based on evidence?

How can I prepare to respond during Final Argument?

- **The following tips will help you prepare:**
 - **Review relevant information on the public record, including the draft conditions.**
 - **Draft, in advance, responses showing why you disagree on certain positions which you may have heard or can anticipate.**
 - **Base your responses on evidence:**
 - Cite the references to the key evidence you are using regarding your response.
 - Evidence must be on the public record.
 - You may also refer to legislation, case law and past decisions of the NEB in your argument (exception to the above rule).
 - Bring a copy of all the evidence you have filed and the one you use in your response so you can refer to it as needed.

How do I submit hearing documents?

- **If you have internet access and can access the public registry, you are expected to submit all documents electronically.**
 - The Participation Portal is a web based tool used to facilitate electronic submissions and distribution of the documents filed in a hearing process.
 - Consult the document “How to submit electronic documents with the Participation Portal?” to view the step-by-step process on how to submit hearing documents with the NEB Participation Portal.
- **If you are unable to use the internet and cannot file your documents electronically, you can file documents to the Board in person, by mail, or by fax.**
 - Consult the Hearing Order to view details regarding the filing requirements attached to the hearing you registered to participate in.

What is a Process Advisor?

- The Board assigns Process Advisors (PAs) to each hearing to assist you to better understand the hearing process for a specific project, and how to participate in it effectively.
- The Process Advisors are available by telephone and email. Visit the project page of the hearing you registered to participate in at www.neb-one.gc.ca to find the contact information of your Process Advisors.
- Process Advisors also offer workshops, usually on-line, to assist participants in specific parts of the hearing.
- The Process Advisors can only discuss process matters with you and cannot advise you on how to make your case to the Board.

Where to find more information

- **Website:** www.neb-one.gc.ca
- **General Inquiries:** Phone (toll free) 1-800-899-1265

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