

General Bulletin

GB 2003-22

June 24, 2003

To: All Interested Parties

CLARIFICATION OF ENERGY APPLICATION PROCESS: WHEN MAY AN APPLICANT REQUEST A HEARING WITH THE ALBERTA ENERGY AND UTILITIES BOARD?

The Alberta Energy and Utilities Board (EUB/Board) has continued to refine and clarify its application requirements contained in various guides over recent years, as well as introducing the Appropriate Dispute Resolution (ADR) process as an additional tool in assisting with industry/industry/landowner disputes. Industry applicants and other parties interested in energy projects in Alberta have requested clarification as to when an applicant may request a hearing with the Board.

An applicant may ask for a hearing at any time. However, the Board will not make a disposition on the application until the application is complete. In order for the Board to consider an application complete, the applicant must have provided all the audit and technical information required by *Guide 56: Energy Development Applications and Schedules* or *Guide 65: Resource Applications for Conventional Oil and Gas Reservoirs*, depending on the application type being made. This includes details of its notification and consultation program consistent with the respective guide. Applicants must consult the relevant EUB guide and may communicate with EUB staff to ensure that their notification and consultation are adequate. The EUB will conduct an audit of the supporting material and request the applicant to provide additional information if the application is deficient. This process may take time and requires the collaboration of industry by providing staff with information in a timely fashion.

Guide 56 and *Guide 65* provide minimum notification and consultation requirements, but applicants are required to address all questions and objections from potentially affected parties. This does not mean, however, that the applicant is required to resolve the issues. The applicant must be able to document that it has made a serious attempt to notify and consult all potentially affected parties and to address all of their concerns. Notwithstanding, EUB staff may ask an applicant to complete its program and, to that effect, may have to advertise the application for objections by issuing a Notice of Application; it may also suggest ADR or further measures to ensure that concerns have been addressed properly.

Attached to this general bulletin are responses to common questions that arise regarding this matter. This general bulletin and the attachment provide a very general overview of the

requirements and are provided for information only. The applicant should consult the appropriate guide to determine the specific requirements for each particular application. In addition, parties can monitor an EUB Web site feature currently under development where Frequently Asked Questions arising from *Guide 56* will be posted. The Web site address is <http://www.eub.gov.ab.ca/BBS/requirements.Guides/g56.htm>.

Should parties have any questions with respect to this matter, please contact the EUB's Law Branch at (403) 297-8259 or the Facilities Applications Group at (403) 297-6931.

<original signed by>

J. I. Douglas
Board Member

Attachment

ATTACHMENT TO GENERAL BULLETIN 2003-22

When are applications approved without a hearing?

A routine facility or project application may be approved without a hearing if it is complete with respect to the technical, safety, public consultation, and environmental requirements detailed in *Guide 56* and *Guide 65* and there are no outstanding objections or concerns.

For an application to be considered routine, it must meet the following conditions:

- Supporting documentation demonstrates compliance with all EUB technical and participant involvement requirements.
- There are no outstanding concerns or objections on matters for which the EUB Board has jurisdiction.
- The applicant has obtained consent from the landowner or the landowner has agreed to submit to the Surface Rights Board jurisdiction for a ruling.
- The applicant has not requested relaxation from regulatory requirements.

If all of these conditions are met, the EUB will issue a licence without a hearing. Similarly, the EUB will process an application for a change in spacing, for example, without a hearing if there are no objections from the public or industry and all the technical information has been provided.

An application may also be approved without a hearing if outstanding concerns or objections are dealt with while the application is being processed. This may occur if issues are resolved between the parties or the Board has made a determination to set aside objections or concerns pursuant to Section 26 (2) of the *Energy Resources Conservation Act*.

When does an application go to a hearing?

An application has the potential to go to a hearing if it appears to the Board that its decision on an application may directly and adversely affect the rights of a person. The person objecting to an application must demonstrate that he or she has legally recognized rights that may be “directly and adversely” affected by the decision. The Board makes its decision on a case-by-case basis, taking into account the facts of each application and the rights of each party. In making a determination, the Board must balance the surface and subsurface interests. The Board may dismiss an objection and issue an approval or licence, or it might direct the application to be heard. It will then assign a panel and set a date for hearing the application.

When should an applicant engage in the Appropriate Dispute Resolution (ADR) process (including direct negotiations, field facilitation, or mediation)?

The ADR process should be engaged in as early as possible. The Board will continue to process the application during ADR and will make a disposition to either dismiss the objection(s) or to set a date for a hearing as soon as the application is complete.

Does engaging in ADR result in longer processing time for an application?

Not necessarily. The EUB policy is that ADR proceeds in parallel with the application processing. Therefore, EUB staff continue to request and analyze the technical information and get the file ready for a disposition by the Board, unless the applicant requests that the application be put on hold during ADR. To ensure that processing of the application continues, the applicant must provide its audit material and further information, if requested, in a timely fashion.

If ADR fails to resolve issues, can the applicant automatically go to a hearing?

If no hearing has yet been scheduled because the application has not been completed during the ADR process, the application will first have to be completed before going to the Board to determine if there should be a hearing. Once a hearing date has been set, the hearing will proceed as scheduled unless the parties request and the Board agrees to an adjournment.