

Having Your Say at an ERCB Hearing

This EnerFAQs explains the purposes of Energy Resources and Conservation Board (ERCB) public hearings and provides information to assist you in participating effectively.

What is an ERCB hearing?

An ERCB hearing is a public forum where those who may be directly affected by an application for an energy facility may participate. An energy facility includes everything from a gas or oil well to a sour gas processing plant or a major oil sands facility.

An ERCB hearing is a formal and quasi-judicial proceeding. It provides a level playing field for all participants—each has the opportunity to know and question the positions of others. This allows the Board to make a fully informed decision.

Do many applications go to hearing?

ERCB hearings are held when the ERCB receives an objection from a person who may be directly and adversely affected by a proposed project. Applications filed may create community concern or a need for more information; however, these matters are often settled through an Appropriate Dispute Resolution (ADR) process. When matters are settled through ADR or there are no public concerns and objections, there is no need for a hearing. The Board will also dismiss objections if the person does not appear to be directly or adversely affected. See *Informational Letter 2001-1: Appropriate Dispute Resolution (ADR) Program and Guidelines for Energy Industry Disputes*.

If issues cannot be solved, may I start the hearing process?

Yes. Through a detailed letter, you may initiate and then participate in a hearing if the ERCB agrees that an energy project may directly and adversely affect your rights. A hearing will only take place if the people involved have considered ADR first but were unable to find solutions. For more information on how to trigger the hearing process, see *Directive 029: Energy and Utility Development Applications and the Hearing Process*.

How do I find out about hearings?

The ERCB mails a Notice of Hearing to inform people and organizations affected by an application about the hearing. The Notice of Hearing may be published in daily and/or weekly newspapers.

Hearing notices are available on the ERCB Web site at www.ercb.ca. Companies involved in large projects usually hold an open house to explain their proposed project, answer citizens' questions, and address the community's concerns.

The Notice of Hearing provides interested parties with the following information:

- date, time, and location of the hearing,
- application number and nature of the application,
- a contact for the company that filed the application,
- ERCB information,
- the due date for filing objections or interventions, and
- a statement that all material relating to the proceeding is subject to Alberta's Freedom of Information and Protection of Privacy legislation.

What is an intervener?

An intervener is anyone other than the applicant who registers at an ERCB hearing for a proposed energy project in Alberta. An intervener may be opposed to or in support of a project or may wish to express concerns.

How do I register as an intervener for a hearing?

If you wish to register as an intervener, you must write a letter and submit it to both the applicant and the ERCB by the deadline stated in the Notice of Hearing.

You must submit a copy of your intervention to the applicant, as well as a specified number of copies (as stated in the Notice of Hearing) to the ERCB. All written submissions from the applicant and interveners become public documents, available to all participants. In this way, everyone is able to review everyone else's submissions prior to the hearing and is better able to prepare responses.

What should I include in my written submission to become an intervener?

Interventions must deal with the application in question and should not relate to general industry concerns. For a complete description of what to include in the written submission, see [Directive 029: Energy and Utility Development Applications and the Hearing Process](#). Start by explaining where you live, work, or own land in relation to the site of the proposed facility. Detail your views about the proposed development, giving reasons why and how you will be adversely affected should the development proceed. The ERCB must decide on applications based both on individual interests and the broad public interest, that is, based on the benefits of the energy facility for all Albertans. If interveners simply oppose a development without providing solid reasons for doing so, they may be disappointed.

If you have concerns, try to suggest reasonable alternatives that could alleviate impacts. Explain what conditions, if any, you would like to see imposed on the operator, should the application receive approval. If you are in support of the proposed facility, the ERCB needs to hear from you too. Hearings are to learn about all sides of a situation. Be aware, though, that the ERCB cannot use unsubstantiated information. Try to support your beliefs with facts specifically related to the project under discussion.

What's the next step?

Once you have provided your written summary of concerns and objections about the proposed energy development to the applicant and ERCB, you need to prepare for the hearing.

May I get information from the company?

Yes. The company is required to provide interested parties with a copy of the application, including any supporting information, such as an environmental impact assessment or geological interpretations. However, the company does not usually supply everyone with a full copy of the application; rather, it will make a copy available locally for study.

Sometimes more information is necessary for someone to fully understand the applicant's position. In this case, you may ask for more information through an information request (IR). The result of an IR should clarify, simplify, and create an understanding of the issues. Section 27 of the Rules of Practice outlines the procedure for making an IR; it is available on the ERCB Web site at www.ercb.ca and from ERCB Information Services.

What are the Rules of Practice?

The ERCB's Rules of Practice is similar to a road map in that it provides directions for any type of proceeding before the ERCB. The Rules of Practice consists of regulations that explain how and what must be done when a participant is faced with a variety of situations during a proceeding. The ERCB expects all applicants and participants in ERCB matters to be familiar with the Rules of Practice.

Should I form a group to intervene?

Research and preparation of a submission can take a lot of time and effort, and you may decide to form or join a group with other people in your area if they share your concerns or objections. A group submission may be very helpful, as it indicates broader support for the views expressed. Whether you prepare your submission alone or as a group, it is best to do very thorough work and provide solid evidence to support your points of view.

Do I need to hire a lawyer?

Although there is no requirement that a lawyer represent you during the hearing, having a lawyer represent your interests may be a good idea. The ERCB hearings are, in some ways, like a civil case before a judge. Lawyers are trained to present a client's case, cross-examine the other side's witnesses, and make arguments on what the ERCB's decision should be. The lawyer can also assist in arranging for experts, if they are needed to make your case.

Do I have to pay for all of this?

To qualify for the recovery of costs, an intervener must establish that he or she has an interest in land that may be directly and adversely affected by the Board's decision. Generally, the Board will require the applicant to pay those expenses that are directly and necessarily related to an intervention. Costs may arise from researching and preparing your submission, hiring a lawyer, and attending the hearing. Following the hearing, the ERCB considers requests for interveners' costs and may order the applicant to pay them. Before spending money, consult *Directive 031: Guidelines for Energy Proceeding Cost Claims*.

How long does an ERCB public hearing last?

Every case is unique; hearings may last anywhere from one day to several weeks, depending on the nature of the application and the complexity of the issues.

May I attend an ERCB hearing just to listen?

Certainly. ERCB hearings are open to the public.

What is a hearing panel?

A hearing panel is usually a group of three Board Members or Acting Board Members who are selected by the ERCB to conduct a hearing.

What happens at an ERCB hearing?

An ERCB hearing follows a formal process to ensure that everyone has a say:

Opening Remarks – The panel chair explains the purpose of the hearing and introduces the members of the panel and all ERCB staff in the room. Then participants in the hearing register an appearance, coming forward and introducing themselves.

Preliminary Matters – Procedural and legal matters are presented, such as adjournment requests or the scheduling of a specific witness at a particular time.

Applicant (Application) – The applicant presents its case and may question its own witnesses. Then interveners, ERCB staff, and the Board panel may cross-examine those witnesses. Once cross-examinations are complete, the applicant may question the witnesses again to clarify any issues that arose.

Interveners – Interveners next present their cases in the same order they registered. After the intervener gives direct evidence, the lawyer for the applicant may cross-examine, followed by the other interveners who wish to cross-examine. ERCB staff and members of the panel may then cross-examine the intervener. Following cross-examination, the intervener is entitled to clarify any matters that arose.

Rebuttal Evidence by Applicant - Once the above process is complete with all the interveners and their witnesses, the applicant may submit additional evidence to address new points raised by interveners' evidence.

Final Argument or Summation – Each participant may provide an explanation of what he or she believes are the important aspects of the issues involved and what decisions they feel the panel should make. The applicant may respond to interveners' arguments.

Closing of Hearing – The panel chair announces the hearing is completed and that the decision of the panel and the reasons for it will be given at a later date.

Decision Report – The Board's final reasoning and decision on the application is issued several weeks to several months after the hearing in a decision report. This is distributed to all registered participants and is made available to the public.

When will the application be decided?

The ERCB currently releases 90 per cent of its decisions within 90 days of the close of a hearing. The hearing panel releases a decision report, which outlines the position of all hearing participants and gives the panel's decision and reasons for the decision. The decision report is distributed to all participants and is available through the ERCB's Information Services and on the ERCB Web site, www.ercb.ca.

Can I really affect the final decision?

Yes. In making its decisions, the ERCB is committed to addressing all valid concerns put forward by interveners. If the project is approved, special conditions may be attached to the decision that take into account the specific concerns of local people.

May an ERCB decision be appealed?

Yes. An appeal of the Board's decision may be made to the Alberta Court of Appeal on questions of jurisdiction or law, meaning that the ERCB did not have the right to make the decision or that it made a mistake about the law. Permission to appeal the decision must be obtained from the Court of Appeal by making an application for leave to appeal within 30 days after the Board's decision is issued. In certain circumstances, the court may grant an extension.

When may an ERCB decision be reviewed?

The ERCB may decide to review its own decision if it can be shown that it made an error of law or made the decision outside of its jurisdiction or if new information becomes available.

Who enforces whatever the company agrees to during a public hearing?

The ERCB enforces the conditions in the decision report through inspections and, where appropriate, government department follow-up. Generally, responsible applicants do what they agreed to do, and intensive follow-up is not required. However, if you think this is not the case, contact the nearest ERCB Field Centre and explain the problem. If your concern relates to coal mines, contact the ERCB head office in Calgary.

Additional Information

For additional information on the ERCB or its processes or if you have general questions about oil and gas in the province of Alberta, contact the ERCB's Customer Contact Centre: Monday to Friday (8:00 a.m. - 4:30 p.m.) at 1-855-297-8311 (toll free) or 403-297-8311.

This EnerFAQs is one in a series.

- [No. 1: What Is the Energy Resources Conservation Board?](#)
- [No. 2: Having Your Say at an ERCB Hearing](#)
- [No. 3: Inspections and Enforcement of Energy Developments in Alberta](#)
- [No. 4: All About Critical Sour Wells](#)
- [No. 5: Explaining ERCB Setbacks](#)
- [No. 6: Flaring and Incineration](#)
- [No. 7: Proposed Oil and Gas Development: A Landowner's Guide](#)
- [No. 8: Coalbed Methane](#)
- [No. 9: The ERCB and You: Agreements, Commitments, and Conditions](#)
- [No. 10: Public Health and Safety: Roles and Responsibilities of Agencies That Regulate Upstream Oil and Gas](#)
- [No. 11: All About Appropriate Dispute Resolution \(ADR\)](#)
- [No. 12: Oil Sands](#)
- [No. 13: Emergency Response Preparedness in the Energy Industry](#)
- [No. 14: Horizontal Multistage Hydraulic Fracturing](#)
- [No. 15: Objecting to an Energy Resource Project](#)

Every year the ERCB collects, compiles, and publishes a large amount of technical data and information about Alberta's energy development and resources for use by both industry and the general public. This includes raw data, statistics, information on regulations, policies, and decisions, and hearing materials.

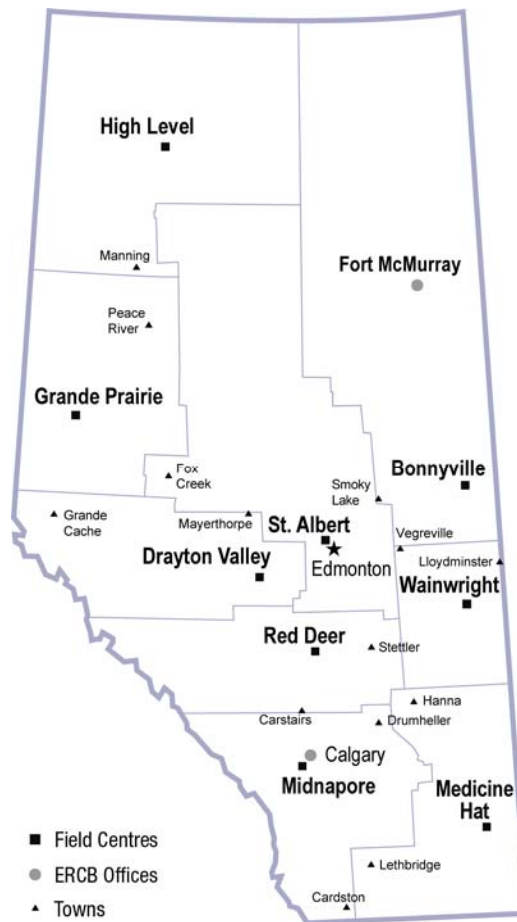
Publications may either be viewed at the ERCB library or obtained from Information Services. Both are housed on the main floor of the ERCB head

office in Calgary. Publications may also be downloaded free of charge from the ERCB Web site www.ercb.ca.

To obtain a print or CD copy of a specific publication, contact ERCB Information Services by phone (403-297-8190), fax (403-297-7040) or e-mail Infoservices@ercb.ca.

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Field Centres

Bonnyville	780-826-5352
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Grande Prairie	780-538-5138
High Level	780-926-5399
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Midnapore	403-297-8303
Red Deer	403-340-5454
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