

Participant Guide to the Hearing Process

April 2018

Alberta Energy Regulator

Manual 003: Participant Guide to the Hearing Process

April 30, 2018

Published by

Alberta Energy Regulator

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1 Introduction

The Alberta Energy Regulator (AER) has a public hearing process under the *Responsible Energy Development Act (REDA)*. This manual provides an overview of this process and tries to answer common questions. The requirements are set out in *REDA* and the *Alberta Energy Regulator Rules of Practice (Rules of Practice)*.

2 What is a Hearing?

An AER hearing is a court-like proceeding. It is open to the public. Parties have the chance to make their case by providing evidence, asking questions of other parties, and making final arguments. There are rules for the hearing to ensure that the process is fair and efficient.

The *Rules of Practice* sets out the procedures for any type of proceeding before the AER. The *Rules of Practice* explains how and what must be done in a variety of situations before, during, and after a hearing. The AER expects all applicants and participants in AER hearings to be familiar with the *Rules of Practice*, which is available on our website, www.aer.ca.

3 Who Holds Hearings?

Hearings are led by hearing commissioners who are independent from the day-to-day operations of the AER. The chief hearing commissioner assigns hearing commissioners to sit on panels to decide matters sent to them by the AER. A hearing panel consists of one or more hearing commissioners—usually three. Their decisions are the final decision of the AER.

4 How Does a Matter Get to a Hearing?

The AER has wide discretion about when to hold a hearing. Most hearings are held when there is an outstanding concern about an application, or for regulatory appeals.

4.1 Hearings on Applications

The AER posts a public notice on its website for 30 days for every application. Public notices of application are located at www.aer.ca, Systems & Tools > Public Notice of Application.

If you believe that you may be directly and adversely affected by the activity described in an application, you may file a statement of concern with the AER. There are specific rules regarding how and when to file a statement of concern. These are set out in Part 1, sections 5.3 and 6, of the *Rules of Practice* and are further explained on our website (Applications & Notices > Statement of Concern). If a statement of concern does not meet the requirements, it will not be accepted. If there are no statements of concern about an application and it meets regulatory requirements, the AER may process it in an expedited manner.

If there are statements of concern, they are reviewed and considered by the AER before making a decision on the application. The AER may decide to deny or close the application, approve it even though a statement of concern has been filed, or refer it to the hearing commissioners. The hearing commissioners may decide to hold a hearing on the application or, after consulting with the parties, initiate alternative dispute resolution (ADR).

Whether you filed a statement of concern is one factor that a hearing panel takes into account when you request to participate in a hearing. Therefore, you should consider filing a statement of concern if

- you believe you may be directly and adversely affected or
- you have a tangible interest in the subject matter of the application and you can be of material assistance if there is a hearing.

For more information about how to file a statement of concern, see the EnerFAQs *Expressing Your Concerns – How to File a Statement of Concern About an Energy Resource Project*.

Appendix 2 of this manual provides an example of a statement of concern.

4.2 Hearings on Regulatory Appeals

Section 38 of *REDA* allows for certain AER decisions to be appealed through the regulatory appeal process. Our website (Applications & Notices > Appeals) summarizes the types of decisions that are appealable and deadlines for filing.

If a regulatory appeal of a decision is requested, and a hearing was not held before making the decision, the AER may decide to conduct a regulatory appeal of the decision. If you are granted a regulatory appeal, it will be decided by a hearing, unless otherwise resolved by ADR or the request is withdrawn.

The hearing process for regulatory appeals is slightly different from the hearing process for applications covered in this manual. For example, the rules for deciding participation and the order of presentation at the hearing are different. Part 3 of the *Rules of Practice* details the process for regulatory appeals.

4.3 Hearings on Other Matters

The AER can hold hearings for other matters—for example, hearings for applications made by landowners under section 33 of the *Pipeline Act* to remove pipelines, hearings to consider making a declaration naming a person under section 106 of the *Energy Resources Conservation Act*, and hearings for a joint proceeding with the Canadian Environmental Assessment Agency (CEAA) to conduct an environmental assessment for an energy project regulated by the AER.

The AER may also hold inquiries. When it does, it is usually for important matters with a broad scope that affect the public interest. An inquiry allows the issues to be considered in a transparent public process. Examples of inquiry hearings include the Public Safety and Sour Gas Initiative (final report

2007) and the Proceeding into Odours and Emissions in the Peace River Area (final report 2014). The final reports are available on our website.

5 What is the Hearing Process?

5.1 Assigning the Hearing Panel

When a decision is made to hold a hearing, the chief hearing commissioner assigns a panel of hearing commissioners, with the option to assign a hearing commissioner to facilitate ADR. Once a panel is assigned, the chief hearing commissioner sends a letter to the applicant and to those who filed statements of concern informing them of the decision to hold a hearing.

5.2 Notice of Hearing

The notice of hearing is considered the formal start to the hearing process. A notice of hearing is sent to the applicant, everyone who filed a statement of concern, and to others identified in the application. Notices are posted on the AER website and may be published in local and provincial newspapers, online journals, or other methods that fit the circumstances.

The notice of hearing

- briefly describes the subject matter of a hearing,
- explains how to request to participate in a hearing,
- lists any filing deadlines,
- provides the name and address of the applicant,
- explains where copies of the application and other documents supplied in support of the application may be viewed or obtained, and
- describes any additional procedural requirements that the AER considers necessary.

If you are unable to meet any deadline as set out in the notice, you should write to hearing.services@er.ca to request an extension. The hearing panel decides whether requests will be granted.

5.3 Filing a Request to Participate

Hearings are open to the public to observe, but not everyone can participate. If you want to participate in a hearing, you must file a request to participate by the deadline in the notice of hearing, even if you have already filed a statement of concern. The panel will consider your request and decide if you may participate and how. Requests received after the deadline may not be accepted. If no requests are received, or if the participants withdraw, the hearing may be cancelled.

Your request to participate must be in writing; a letter or email is acceptable. It must contain the information asked for in the notice of hearing, including

- your contact information (name, address, telephone number, email address) and the contact information for your representative if you have one;
- a copy of your statement of concern or an explanation of why you didn't file one;
- an explanation of how you may be directly and adversely affected by a decision of the AER on the application;
- a description of what your interest is and why you should be able to participate;
- if you won't be directly and adversely affected, an explanation of how your participation will materially assist the AER, what tangible interest you have in the matter, how your participation will not unnecessarily delay the hearing, and how you will not repeat or duplicate evidence of other parties;
- the outcome of the application that you advocate;
- a description of the issues that you intend to address and how you would like to participate;
 - Do you intend to participate fully in the hearing, meaning file evidence before the hearing starts, speak to your evidence at the hearing, be questioned about your evidence, question others on their evidence, and make argument to the hearing panel?
 - Do you intend to file expert evidence? If so, what type and do you expect to hire an expert to assist you?
 - If you do not wish to participate fully, what issues do you intend to address or what parts of the hearing do you wish to participate in?
- a description of the efforts, if any, made to resolve your concerns with the applicant before the proceeding; and
- if you are acting on behalf of a group or association, the nature of your membership in the group or association and information demonstrating that a majority of your members may be directly and adversely affected by the proposed project.

See appendix 2 for an example of a landowner request to participate.

The hearing panel will send its decision about participation to everyone who files a request to participate and to the applicant. The decision will include how you may participate. We post these procedural decisions on our website, www.aer.ca, Applications & Notices > Decisions > Participatory/Procedural Decisions.

5.4 Information Sessions

AER staff are available to answer any questions about the hearing process. Before the hearing, AER staff may travel to the area of the province where the project is located to explain the hearing process to interested parties. The application and your concerns about it cannot be discussed at information sessions—only the hearing process itself.

If you believe that you or your community would benefit from an information session, contact hearing.services@aer.ca.

5.5 Filing a Submission

Hearing participants may make submissions to the hearing. Because the hearing commissioners can only make their decisions based on the evidence before them, your submission should contain all the information you want to put before them that relates directly to the issues for the hearing and supports the outcome you advocate.

To help you understand the application and to prepare your submission, you can request a copy of the hearing materials from the applicant or contact the hearing coordinator at hearing.services@aer.ca. The hearing coordinator can explain the process and is the main point of contact for the hearing.

It is important that your entire submission be provided to the panel and all the parties before the hearing. No new evidence should be presented at the hearing.

A letter with the submission dates will be sent to participants. It describes how and when to file your submission. In some cases the panel will ask parties to address certain issues in their submission. A submission must include

- the outcome of the application you advocate and the reasons why the panel should decide that way;
- the facts you propose to show in your evidence;
- all documents, photos, reports, presentations, or any other types of materials you want to enter as evidence;
- a description or summary of the nature and extent of testimony and any expert reports and evidence;
- a list of your witnesses;
- the reason why you believe the panel should decide the matter the way you want; and
- anything else that the hearing panel directs the parties to address in a submission.

After the submissions are filed, the panel may ask for additional information or further submissions from parties.

The hearing record is public. You should assume that anything you submit will be available to the public, including anything filed with personal information such as your mailing address, telephone number, email address, health information, financial information, as well as any agreements or arrangements that you have made with the applicant prior to the hearing. If there is particular information you want to keep confidential, you may make a written request to the panel (via [hearing.services@aer.ca](mailto:hearing.services@ aer.ca)) explaining why the information should be kept confidential. See the *Rules of Practice* for more information on confidentiality requirements.

5.6 Information Requests

You may request that another party provide further information. This is called an information request. Information requests are generally intended to

- clarify the evidence already filed,
- simplify the issues,
- permit a complete understanding of the matters being considered, and
- expedite the hearing.

The *Rules of Practice* outlines the procedure for making and responding to an information request. They must be in writing, dated, and contain questions that clearly specify the information you are seeking. They must be filed and served according to the *Rules of Practice*.

When a party receives an information request, it must prepare a response that

- restates the questions asked,
- provides a full and adequate response to each question, and
- identifies who prepared the response.

If a party served with an information request is unwilling or unable to provide a full and complete response, it must provide reasons why the information is unavailable or why it is unwilling to provide the information. You may ask the panel to decide whether the information should be provided.

5.7 Prehearing Meetings

A prehearing meeting may be held at the direction of the hearing panel or at the request of a party. Prehearing meetings are generally held to identify or set the scope of specific issues for the hearing or to determine other hearing processes. Following the prehearing meeting, the panel provides a written decision about the matters addressed at the prehearing.

5.8 Preparing for the Hearing

For the panel to fully understand your position, careful preparation of your evidence is essential. If you intend to hire a lawyer (see below), you need to choose your lawyer early in the process to ensure that they understand your concerns and the application. If you do not intend to hire a lawyer to represent you at the hearing, it will be up to you to prepare yourself and any witnesses you intend to call at the hearing. You will find it useful to

- familiarize yourself with the AER's hearing process,
- review the submissions of the other parties to understand their positions and identify where you may avoid duplication,
- prepare questions in advance if you intend to cross-examine the applicant or other parties,
- practice your oral testimony in advance and think about answers to some possible questions that you may be asked in cross-examination,
- prepare questions for any witnesses you intend to bring to the hearing,
- meet with your witnesses in advance and prepare them for the hearing by going through a dry run of their testimony (e.g., ask them the same questions that you will ask at the hearing), and
- prepare your final arguments to the panel, which should summarize your position and show how the evidence in the hearing supports your position.

Your evidence must be in the submissions you filed before the hearing. The filing dates are in the letter sent to participants. To allow parties a fair chance to prepare for the hearing, new evidence may not be introduced during the hearing unless you have asked for and received permission from the hearing panel.

5.8.1 Lawyers

Although there is no requirement that a lawyer represent you, having a lawyer may help you more effectively participate in the hearing. They are trained to present their client's case, cross-examine the other side's witnesses, address procedural and evidentiary issues, and make arguments on what the decision should be. Some lawyers specialize in regulatory matters and can familiarize you with the AER's hearing process. Lawyers can also assist in retaining experts, if needed, to present your case.

See the section on costs in this manual, as some legal fees related to your preparation for and participation at a hearing may be recoverable.

5.8.2 Expert Witnesses

You are not required to have expert witnesses, but you may want to hire an expert to support your case if your evidence is technical and involves complex issues.

Expert witnesses may be used to present certain aspects of your case and to rebut evidence presented by the other parties. Geologists, veterinarians, biologists, and engineers are some of the types of expert witnesses that have appeared at AER hearings.

Expert witnesses give evidence based on their opinion, which is formed through their knowledge and experience.

- The most effective expert witnesses are neutral. That is, they don't argue for one side over another; they simply provide their opinion on an issue based on their experience and training.
- For your witness to be considered an expert, you must provide the hearing panel with credentials of the witness and explain why his or her evidence should be accepted as expert testimony.
- The AER encourages parties to share experts where you have a common view or concern about a particular issue.

5.9 At the Hearing

Hearings are open to the public to observe without participating. Only those persons who have been granted the right to participate by the hearing panel may take part in the hearing. A public hearing is not a meeting; it is a legal proceeding to which rules and procedures apply. This ensures that the hearing panel receives evidence and argument that are relevant to the issues and that the hearing is conducted in a fair manner. The hearing allows the applicant and participants to highlight the matters they have presented in their written submissions and make argument to support their case before the hearing panel.

Before the hearing, all parties are given the opportunity to submit their evidence and explain their position. If new evidence is brought forward during the hearing, the hearing panel will rule on whether it will be allowed.

The usual order of the hearing is shown below; however, the procedure for each hearing will be determined by the panel to suit the circumstance, usually after consultation with the parties.

- At a hearing, the applicant goes first. The applicant explains the project and highlights key points in the submissions it previously filed.
- Then participants, in turn, question (cross-examine) the applicant. The purpose of questioning is to test the evidence, not to introduce new evidence.
- When questioning of the applicant is complete, each participant has a chance to provide their evidence and, in turn, is cross-examined by the other participants.
- AER staff and the hearing panel may also ask questions at the hearing.
- After the all the evidence has been presented, each party has a chance to present its final arguments to the panel.

The hearing is then closed and the panel will issue a written decision within 90 days.

5.9.1 Where are Hearings Held?

Hearings are often held near the project and community where the majority of participants live. When public hearings are not held locally, participants may be reimbursed for reasonable travel expenses to the site of the hearing (see the section on costs in this manual). The AER also has a hearing room (Govier Hall) in Calgary.

5.9.2 Role of the Panel and AER Staff

The panel will review all the evidence and make decisions about procedural matters and, ultimately, about the application itself. Their decisions are based solely on the evidence before them. A decision of a panel of hearing commissioners is a decision of the AER.

The panel usually has assistance of AER technical staff in preparing for and conducting hearings. Staff support the hearing panel on matters such as engineering, environmental science, geology, public safety, site selection, emergency response planning, finance, traditional land use, and economics. Staff members are neutral and do not advocate for one party or position. Staff members do not play an adversarial role and do not oppose or support either the applicant or any participant. In exceptional cases, AER staff may make submissions to the hearing panel advocating a particular position and may act as a party to a hearing. If this occurs, the hearing panel is assisted by different staff.

An AER lawyer is also present at a hearing and has several functions:

- to advise the hearing commissioners on legal matters, procedure, and evidence;
- to question the witnesses, with the assistance of other AER staff, ensuring that relevant evidence is before the hearing panel; and
- to provide parties with information about procedure.

A hearing coordinator is assigned to every hearing and can answer your questions about the hearing. Their contact information is in the notice of hearing, or you can contact hearing.services@aer.ca. They can help you understand the AER hearing processes but cannot assist you with preparing your submission or evidence.

6 What Happens at a Hearing?

A hearing may be written, electronic, or oral. Oral hearings are the most common type. In an oral hearing each party will usually file written submissions before the hearing and also appear in person to present their case to the hearing commissioners. In a written hearing each party presents their entire case in writing and they do not appear in person before the hearing commissioners. The hearing commissioners then make a decision based on the written submissions. An electronic hearing is by teleconference, video

conference, or other electronic means where each party is able to hear and respond to the comments of other parties as they are made.

The following describes a typical oral hearing (see appendix 3 for a flowchart).

6.1 Opening Remarks

The hearing process opens with the chair of the hearing panel making brief remarks explaining the purpose of the hearing and introducing the hearing commissioners and staff.

After the opening remarks, all parties or their representatives must be present to “register” (i.e., come forward and introduce themselves). The applicant registers first and then each participant.

6.2 Preliminary Matters

Following registration, the hearing panel asks if there are any preliminary issues to address.

- Preliminary issues generally deal with legal or procedural matters, such as an adjournment request or the scheduling of a specific witness at a specific time.
- Parties may want to identify any difficulties they have about the scheduling of their presentation due to employment or other commitments.
- The issue of scheduling or other issues should be brought to the hearing panel’s attention at this time or be explained to the AER’s lawyer before the start of the hearing.

If you have questions about procedure, this is a good time to ask, and depending on the question, the hearing panel may ask a staff member or AER counsel to answer your questions.

The hearing panel must establish time limits for the presentation of evidence, cross-examination, and final arguments. Parties can expect to be asked before the hearing to provide their best estimate of time they will need. The hearing panel will take those into consideration when it establishes the hearing schedule. All parties will be given a copy of the time limits set by the panel. Parties are expected to use their best efforts to stay within those limits. The panel may exercise its discretion to vary them if it deems appropriate and fair.

6.3 Applicant’s Evidence and Questioning

After preliminary issues have been dealt with, the applicant presents its case. The applicant’s witnesses swear or affirm that they will tell the truth. They give evidence in support of the application. The lawyer for the applicant may ask the applicant’s witnesses questions (called examination-in-chief) or the applicant’s witnesses may give a brief presentation summarizing their evidence.

When the applicant's witnesses finish giving their evidence, the participants can ask questions of the witnesses; this is called cross-examination.

- Only participants who are “adverse in interest” to another participant (are opposed to their position) may cross-examine that participant.
- Generally, witnesses are seated as a panel to give evidence on a specific topic (e.g., landowner impacts or expert evidence on risk). Witnesses seated as a panel may confer before giving an answer.
- The hearing panel may set limits on the time you have for cross-examination.
- Cross-examination is used to clarify evidence or test the other side's evidence through questioning of its witnesses.
- Cross-examination is *not* the time for you to give your evidence.

Following cross-examination by the participants, the AER staff and the hearing panel may ask questions of the witnesses. After cross-examination and questioning of the applicant's witnesses is finished, the applicant can question its witnesses again to clarify evidence raised during cross-examination. This is called redirect examination.

6.4 Participant Evidence and Questioning

Next, participants present their cases in the order decided at the opening of the hearing.

- All of your written evidence is on the record. You do not have to read it into the record.
- This is your time to highlight the important parts of and speak to the hearing panel about your evidence.
- After you give your direct evidence, the applicant may cross-examine you or your witnesses.
- Other participants adverse in interest may cross-examine you and your witnesses.
- You may be questioned by AER staff and the hearing panel.

This is repeated for each of the participants and their witnesses. After all of the participants have presented evidence and been cross-examined, the applicant may give evidence in response to issues raised by participants. This is called rebuttal.

Following the evidence there may be a break in the hearing. For example, this may happen if there is a need to file more evidence, to wait for a hearing report from the Aboriginal Consultation Office (ACO), or to give parties time to prepare for final argument.

6.5 Final Argument

Final argument is intended to summarize evidence, highlight the important aspects of the issues, and state what the AER's decision should be and provide supporting reasons.

- Sometimes the hearing panel provides time after the evidence is complete for parties to prepare their final arguments. However, you should be ready with your argument as there may be little or no time for preparation during the hearing.
- Final argument is often given orally but the hearing panel may decide to have it in writing. The panel will generally ask the parties for their views on whether the argument should be oral or written. If final argument is oral, the applicant goes first, followed by the participants.
- The applicant is then given an opportunity to reply to the participants' final arguments.

6.6 Closing of the Hearing and the Decision

After final arguments, the hearing panel usually announces that the hearing is completed. If additional evidence needs to be filed, the panel will declare the hearing complete when the last evidence is filed.

The hearing panel then takes time to consider all the evidence and arguments. They will then decide whether to approve the applications, deny them, or approve with conditions. The hearing panel is expected to release a written decision report, which explains the reasons behind the decision, within 90 days of the close of the hearing. The decision report is distributed to all the parties and is posted to www.aer.ca. If there are conditions attached to the approval, an action plan will be created and the conditions will be monitored by the AER for compliance.

7 What About My Costs?

If you are participating in a hearing, you may be eligible to have some of your costs paid for by the applicant. The AER expects the applicant and participants to try to agree on reasonable costs on their own. If necessary, you may make an application to the hearing panel to decide on those costs the parties cannot agree on between themselves. The hearing panel will determine what costs are eligible.

Directive 031: REDA Energy Cost Claims is available on our website. It provides information about costs, including how and when to submit a costs claim.

When determining the amount of a costs award, the hearing panel considers expenses incurred by the participant that the hearing panel considers reasonable and directly and necessarily related to your preparation for and presentation at the hearing. Costs such as legal fees, consultant fees, accommodations, and meals may be approved if the hearing panel decides they are reasonable. It is likely that an award of costs will not cover all the expenses incurred participating in a hearing.

Usually costs are only awarded for reasonable expenses incurred *after* the AER has issued a notice of hearing. In exceptional circumstances the AER may approve costs participants incur before the notice if they are reasonable and directly and necessarily related to the hearing.

If a notice of hearing has been issued, the AER may approve an advance on hearing preparation costs. An advance of funds request must be made by the deadline, if any, specified in the notice of hearing. Part 5, sections 59 and 58.1, of the *Rules of Practice* deal with advance of funds requests.

8 Are AER Decisions Appealable?

8.1 Regulatory Appeal

If a hearing was not held before making a decision, the AER may decide to conduct a regulatory appeal of the decision if asked. Section 36 of *REDA* sets out who is eligible to request a regulatory appeal and what decisions may be appealed. Decisions from hearings can only be appealed to the courts.

Hearing commissioners conduct a regulatory appeal by holding a hearing, unless it is otherwise resolved by ADR or the request is withdrawn.

8.2 Appeal to the Courts

You may apply to the Alberta Court of Appeal for permission to appeal a decision of the AER (as per section 45 of *REDA*). Permission to appeal is only granted for errors of law or jurisdiction. If permission is granted, the Court of Appeal will then hear the appeal.

If you wish to appeal a hearing panel decision to the courts, you may need to hire a lawyer because the method for filing an appeal, including formatting of documents, timing of filing, and the types of arguments necessary, are technical in nature. You must make an application to the court for permission to appeal within 30 days of the decision being issued.

Decisions of the Court of Appeal may be appealed to the Supreme Court of Canada with the permission of that court.

Appendix 1 Further Information

Publications

AER documents are available for viewing and download free of charge on the AER website at www.aer.ca. Hard copies may be purchased by contacting Order Fulfilment:

Alberta Energy Regulator
AER Order Fulfilment
Suite 1000, 250 – 5 Street SW Calgary, Alberta T2P 3G4
Telephone: 1-855-297-8311 (toll free; press 2)
Email: [InformationRequest@aer.ca](mailto:InformationRequest@ aer.ca)

To see the most up-to-date list of AER publications, visit the AER website, www.aer.ca.

Other AER Documents Related to Hearings

Alberta Energy Regulator Rules of Practice

Directive 031: REDA Energy Cost Claims

Energy Ministerial Order 105/2014 and Environment and Sustainable Resource Development Ministerial Order 53/2014 (Direction for Aboriginal Consultation)

Additional Resources

Surface Rights Board

The Surface Rights Board deals with compensation for surface access for oil and gas activities and for the construction and operation of power transmission and telephone lines. It conducts periodic rent reviews of Surface Rights Board orders and surface leases. It has limited authority to award compensation for damages arising from the operations of a party to a lease or board order.

1229 – 91 Street SW
Edmonton, Alberta T6X 1E9
Email: srb.lcb@gov.ab.ca
Telephone: 780-427-2444 (toll free by first dialing 310-0000)
Website: <https://surfacerights.alberta.ca/>

The Farmers' Advocate Office (FAO)

The Farmers' Advocate Office (FAO) was originally established by Alberta Agriculture in 1973 to be a resource for Albertan farmers and ranchers. Today, the FAO continues to ensure that the rights and interests of rural Albertans are recognized, understood, and protected. The FAO offers advice and

information relating to interactions with energy, utilities, and surface rights; rural disputes; municipal processes; and farm implement concerns.

Room 100, 7000 – 113 Street
Edmonton, Alberta T6H 5T6
Telephone: 310-3276 (FARM)
Email: farmers.advocate@gov.ab.ca
Website: www.farmersadvocate.gov.ab.ca

The Registrar of Land Agents

Agreements for surface interests in land that are subject to a right-of-entry order or expropriation, unless there is an exemption, must be negotiated by a land agent licensed under the *Land Agents Licensing Act*. If you have any concerns about the way you have been treated by a land agent, contact the Registrar of Land Agents.

Alberta Labour
Land Agents Licensing
9th floor, 108 Street Building
9942-108 Street Edmonton, Alberta T5K 2J5
Telephone: 780-422-4600
Fax: 780-422-7173
Email: Land.Agents@gov.ab.ca
Website: <http://work.alberta.ca/labour/registrar-and-staff.html>

Alberta Trappers' Compensation Program

The Alberta Trappers' Compensation Program is administered by the Alberta Trappers' Association to help trappers when they are negatively affected by the activities of other resource users on Crown lands. The Trapper Compensation Board has been appointed to review claims that cannot be resolved through direct negotiations.

Alberta Trappers' Association
6020 Station Main
Westlock, Alberta T7P 2P7
Telephone: 780-349-6626
Email: info@albertatrappers.com
Website: www.albertatrappers.com

Appendix 2 Participation Examples

This fictional story shows how the public can participate in the application and hearing process. Actual participation decisions are found on the AER website under [Applications & Notices > Decisions > Participation/Procedural Decisions](#). Among other decisions, this site has decisions of the AER on statements of concern and decisions of AER hearing panels on hearing participation.

The story of John and Martha Smith

John and Martha Smith reside in southeastern Alberta on a half section of Freehold land that John inherited from his father. They live on and farm the land. Their farming operations consist of crops, such as wheat, barley, and corn. Last year, they started raising llamas.

In April of this year, representatives from the ABC Company met with John and Martha regarding a pipeline that the company was planning to build across part of their land. Other parts of the pipeline will be built on neighbours' lands. The pipeline is for sweet natural gas to tie into an existing gathering system owned by the ABC Company. At the first meeting, the company provided an information package to the Smiths, including a description of the project, as well as a letter from the AER. As they learned more about the project, the Smiths were concerned about the location of the pipeline and the effects a pipeline and construction would have on their crops and animals, and about the safety of the pipeline. The Smiths would like the route of the pipeline changed.

A few days later ABC Company visited the Smiths again to discuss the pipeline with John, Martha, and the neighbours. They had a general description of the project, the reasons for the pipeline location, and details on the construction schedule and method of construction. The Smiths voiced concerns about the effects the pipeline would have on their farming operations and themselves. They also explained that they weren't happy with the route of the pipeline. ABC Company asked them to consent to the project, but they would not.

ABC Company discussed these concerns and explained that they would like permission to enter each owner's land for construction and maintenance of the pipeline. The Smiths continued to have reservations about the pipeline project, and no agreement to change the pipeline route was reached. The meeting ended with ABC Company, explaining they would apply nonroutine to the Alberta Energy Regulator for approval to construct the pipeline. The representatives also explained that the ABC Company would inform the AER that landowners had outstanding concerns about the application and would provide the Smiths with a copy of the public notice of application.

The following week, the Smiths received a package from the ABC Company that included details of the application it had filed with the AER and a copy of the public notice. The public notice gave them a 30 day deadline to file a statement of concern.

Public Notice of Application

Sample notices of application can be found on our website: [Systems & Tools > Public Notice of Application](#).

Statement of Concern

Because the Smiths were dissatisfied with the location of the pipeline, they decided to oppose the application. Following is their statement of concern sent to the AER.

July 7, 2016

RE: Our Statement of Concern to Application 1234567, an Application by the ABC Company for Approval to Construct and Operate a Pipeline

Dear AER:

We are writing this letter to inform you that we oppose application 1234567, which is an application by the ABC Company for approval to construct and operate a pipeline. A portion of the pipeline will be built under/across our land. We own and farm NW 16-19-11W4M and NE 16-19-11W4M.

We oppose this application because we disagree with the proposed route of this pipeline. We believe that the pipeline is too close to the crops we grow. In fact, part of the pipeline is scheduled to go right across one of our crop fields. Currently we grow barley, wheat, and corn for commercial sale. We are worried that the pipeline will affect the growth of our crops and, in turn, hurt our livelihood. I am concerned about this because the construction of pipelines often brings weeds and other pests to the cropland. It takes years for the land to recover, and past experience shows that we can then have weed problems. I don't think that we should suffer for them to benefit.

We also oppose this pipeline because we are concerned about the effects that the pipeline's construction and its operations will have on the health of our animals. We raise llamas for commercial sale. The noise and disruption of construction could set our herd back, just as it is getting established.

We also are concerned about the safety of the pipeline.

As a result of our concerns, we ask that the AER not grant approval of this pipeline application. Please forward any further correspondence regarding this matter to the following address:

John and Martha Smith
Box 111
Anytown AB, (403) 123-4567, JohnandMartha@email.com

Yours truly,

John and Martha Smith

Notice of Hearing

Following the submission of their statement of concern, AER staff contacted the Smiths and discussed options that were available to them and the ABC Company to settle their dispute over the application, including alternative dispute resolution. The Smiths and the ABC Company were not able to resolve their dispute, so the application was scheduled for a hearing.

Sample notices of hearing can be found on our website: Applications & Notices > Notices.

Request to Participate

Anyone can request to participate, and the hearing panel of hearing commissioners will decide who is permitted to participate and to what extent. Following is an example of a fictional request to participate. The decisions of AER hearing panels on hearing participation are found on the AER website under Applications & Notices > Decisions > Participation/Procedural Decisions.

This is a copy of John and Martha Smith's request to participate.

January 20, 2017

John and Martha Smith

Dear Hearing Coordinator:

We request to participate in the AER hearing for the hearing of application 1234567. We own and farm NW 16-19-11W4M and NE 16-19-11W4M. It has been our livelihood for 26 years. Our residence is located in LSD 10-16-19-11W4M. We included a statement of concern that explains how we will be directly and adversely affected by the pipeline. We also enclose photographs and a sketch that describes our house and property and where our children play in relation to the proposed route. We will have more time to gather evidence before the hearing, but for now we can say that there are a number of reasons for our request.

First, we disagree with the proposed route that the pipeline will take across our land. As a result, we will suffer a financial loss.

Also, on our farm, we raise llamas for commercial sale. We are concerned that the construction and operation of the pipeline will disrupt their normal daily routine. For example, the pasture where the animals graze will be disrupted during construction. The construction of the pipeline will be very noisy and our land will be very busy with construction people. During construction, our land will become an unsuitable environment in which to raise llamas. We have used Dr. Schneider's services in the past, as he is an expert on llamas. Dr. Schneider can attend the hearing as an expert witness if necessary.

Finally, we are concerned about the impacts of the construction of the pipeline and its operation on our safety. We are also concerned because of the close proximity of the pipeline to our house and the areas on our land where our children play.

We want to participate in the hearing and look forward to telling our side of the story to the hearing commissioners.

Yours truly,

John and Martha Smith

Participant's Experience at the Hearing

The typical experience of participants, in this case the Smiths, is described below.

On May 2, 2017, John and Martha participated in the AER hearing into ABC Company's application. The hearing opened and there was some preliminary discussion about the order in which the participants would provide evidence and how late the hearing would go each day.

After the preliminary discussions, the witnesses for ABC Company were sworn in and gave evidence in support of the application. The counsel for ABC Company led the witnesses through a summary of the evidence they had filed for the application. This took about an hour. Then John and Martha had the opportunity to ask the witnesses questions (to cross-examine the witnesses). For the most part the witnesses were able to answer their questions. For one question they needed information from the office. ABC Company undertook to get that information before 4 p.m. that day. The hearing panel agreed with the undertaking and said it would permit the Smiths to question the witnesses further about that new information if necessary. The hearing took a break for lunch. By the time they got back from lunch the company provided the information and the Smiths resumed their questioning. In total, the Smith's questioning lasted for 2 hours. Following the Smiths' questions, AER staff and the hearing commissioners questioned the witnesses for a half-hour. This concluded the examination of ABC Company, and the witnesses were excused.

After a brief break, the Smiths took the witness stand and were sworn in. They talked about their evidence and their concerns about the pipeline. They were then questioned briefly by the company, AER staff, and the hearing commissioners. Next, Dr. Schneider, as a witness for the Smiths was sworn in. He explained his expertise and gave evidence about the effects of noise and pollution on llamas. He was then questioned by ABC Company that had brought its own expert who assisted its counsel in questioning Dr. Schneider. The hearing panel also had some questions for Dr. Schneider, and then he was excused.

Questioning ended at 4 p.m. All parties requested that the proceeding take a break and come back that evening to finish. The hearing panel agreed. At 6 p.m. the hearing resumed. First ABC Company, followed by the Smiths, summarized their evidence and made their final arguments. Following final arguments, the hearing commissioners closed the hearing and explained that the hearing panel would make a decision and issue it a final decision would be made within 90 days.

About 2½ months later, the decision was issued.

Appendix 3 AER Oral Hearing Process Flowchart

