



ENERGY REGULATION - THE CONSUMER RELATIONSHIP

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INTRODUCTION

Canada's natural gas distribution and transmission companies deliver energy solutions to more than six million homes, businesses, and institutions in communities from coast to coast to coast. Today well over half of the Canadian population relies on affordable, clean, safe, and reliable natural gas in homes, apartments, buildings, hospitals, schools, businesses and industry.

This backgrounder describes the processes that Energy Boards, Commissions or Tribunals (EBCTs) have put in place to communicate with and determine the needs of ratepayers and represent the "public interest", as well as some key issues around the measure of independence EBCTs have from the political process.

OVERVIEW

Natural gas and electricity delivery utilities operate as natural monopolies. The reason is simple enough: having more than one set of pipes or wires to deliver natural gas or electricity to each home or business is both unnecessary and would be unmanageable, so we have one pipe and one wire. In the absence of competition the consumer's interests are balanced against those of the utility through a regulatory process overseen by quasi-judicial EBCTs. The rules and regulations administered by EBCTs - usually at the provincial level - are in effect a proxy for the open market competition. EBCT actions and decisions are guided by legislation - and at times this guidance is supplemented by policy directives from the government of the day. Within this legislative and directive framework EBCTs adjudicate economic interests amongst the parties and make decisions in the "public interest".

EBCTs conduct formal hearings and other consultative processes to collect information and the various points of view on matters they adjudicate. EBCTs also use

various forms of electronic and written communication to gather and convey information to the public about their operations and other activities and ultimately to convey their decisions. Within this broad framework each EBCT has rules and restrictions that guide who can participate and how.

The majority of the public never take the step of participating. The reasons for this are no doubt many: time, effort, complexity, and/or belief in the ability of the process to manage itself, are some of the possibilities. One result is that most of the interventions in regulatory hearings and consultations come from the same small group of individuals or organizations. This may raise questions about the effectiveness of the intervener process, but given that EBCTs are not bound to accept any particular recommendations from interveners - just take them into consideration - the generally accepted understanding is that the process is a legitimate means for them to better discern the public interest.



THE PUBLIC HEARINGS PROCESS

To help ensure they have a full appreciation of the public interest, EBCTs invite persons and groups potentially affected by their decisions to “intervene” in formal hearings.

Notice of a Hearing:

As a starting point the law requires that notice be given advising the public when a matter “affecting their interests” is to be heard by an EBCT. This notice may be published in newspapers, attached to a customer’s bill, or communicated by such other methods as are considered appropriate. The law also provides that parties have the right to “be heard” on the matters that affect their interests.

As part of this process EBCTs may travel throughout their jurisdictions to ensure easy access for those affected by a matter. EBCTs also use telephone and/or video conferencing to gather information and facilitate hearing participation. Compared to the courts, EBCTs usually have more flexible procedures and rules of evidence designed to promote public participation.

EBCTs use this “intervener” process as their main form of public participation. Intervening is seen as an effective way to voice concerns, ideas or comments. Generally speaking, interveners are allowed to make formal information requests, introduce evidence, and cross examine witnesses giving evidence. This participation allows those who are interested to better understand and potentially influence the actions proposed by regulated utilities. It is also intended to help “complete the evidentiary record,” so that EBCTs – and the public – can be assured that any and all affected had the opportunity to put forth their issues, opinions, and concerns.

Intervener Standing and Intervening in a Hearing:

EBCTs set out conditions and standards to determine who can get “standing” as an intervener. Generally speaking an intervener must have a substantial interest in the outcome of the proceeding and/or represent a substantial number of ratepayers.

Prospective interveners apply for standing to the EBCT and usually are asked to provide the following kinds of information:

- a description of themselves or their group;
- their membership, if any, and association or other group affiliations;
- their specific interest in the proceeding and the grounds for their intervention;
- a concise statement of the nature and scope of their intended participation;
- a request for the written evidence, if it is desired; and
- an indication as to whether they intend to seek cost recovery.

In some jurisdictions the EBCT or government may appoint a “public intervener” or “consumer advocate” for hearings. This designated intervener – usually an experienced public advocate – can help reduce duplication of efforts, reduce hearing costs, and facilitate public intervention. Conversely some EBCTs accept only written evidence in support of any position.



THE PUBLIC HEARINGS PROCESS

Intervener Cost Support or Recovery:

Interveners may receive funding support to pay for items like expert witnesses and the preparation of evidence. These monies usually come from utilities and in turn their ratepayers. Funding can vary quite substantially year-to-year and jurisdiction to jurisdiction depending on the number and length of hearings. In 2012 intervener funding across Canada totalled just over \$20 million dollars for the year.

Some see this financial support as “leveling the playing field” believing regulated utilities have more financial resources and information at their disposal when preparing, presenting and defending an application. Others suggest that such financial support encourages excessive intervention with certain groups and experts becoming regular fixtures in the hearing room. Generally speaking

regular interveners are more knowledgeable of the issues and much more familiar with the hearing process and thus better able to complete the record of evidence and information.

EBCTs often decide on requests for financial support only after a hearing has been completed. They consider if an intervener made a significant and relevant contribution that led to a better understanding of the issue. They also consider if the intervener acted in a responsible and cooperative manner and made reasonable efforts to secure alternative funding.

EBCTs do have the right to allow or disallow some or all of the requested amounts. In some cases intervener funding is only available to groups shown to have limited resources. In the end, cost awards are at the discretion of the regulatory body.

ALTERNATIVE PARTICIPATION PROCESSES

Participating in a hearing is expensive and intimidating and so most EBCTs provide alternatives for public input and commentary. For example some jurisdictions allow parties to seek **presenter** status or submit **written briefs or letters of comment** to express their opinions, without attending a hearing or giving sworn direct evidence. A party may also choose to **observe** the proceedings. If chosen, these alternatives usually do not allow for the cross examination of witnesses or the asking of interrogatory questions of other parties

in the hearing. EBCTs also may use **pre-hearing consultations** such as **stakeholder conferences** to refine the matter at hand, promote dialogue and potentially resolve some issues without the need for a hearing.

In addition to the above EBCTs also have a **consumer complaints process** to resolve disputes regarding billing or discontent with the service being received from the utility.



GOVERNMENT INVOLVEMENT IN THE REGULATORY PROCESS

As mentioned an EBCT is a quasi-judicial body whose authority is established by legislation: hence they are creatures of the legislative branch of government, not the judiciary or the executive. It is customary that the other branches of government respect the legislative parameters of EBCTs, but government can use ministerial directives to steer the EBCTs towards particular policy outcomes. Governments are within their rights to do so, but the practice has consequences. Whereas legislation

gives a decent measure of certainty, directives by their nature can undermine that certainty, as they can appear and disappear much more easily than law. If decisions are effectively being determined through the use of ministerial authority and not the legislature, this calls into question the independence of an EBCT. A result can be a “politicization” of the regulatory process, making it difficult for utilities and their customers to know what the rules of the game actually are.

CONCLUSION

Overall, the goal of the administrative process of EBCTs remains to ensure that the interests of customers and the monopoly utilities that serve them are balanced and utilities operate in a manner consistent with the public interest. Balancing interests is never easy, and efforts to make the process fair and as effective as possible are ongoing. Canada has a well-developed array of Energy Boards, Commissions and Tribunals comprised of distinguished individuals committed to getting the job done well, and they have a significant record of public service pursuing that end.

For more information on natural gas and Canada’s natural gas distribution industry, visit www.cga.ca.

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