Cassels

Energy and Environmental Regulators Look to Balance Health, Safety, and Participation

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In recent weeks, energy and environmental regulators (Regulators) have rapidly implemented operational changes and precautionary measures in response to the COVID-19 pandemic. Generally, Regulators have suspended oral portions of ongoing hearings and other in-person meetings.

Regulators have stated that they will decide whether to implement written proceedings or remote participation options in the near future, likely on a case-by-case basis.

For example, on March 16, 2020, the Canada Energy Regulator (CER) — which is the federal agency overseeing oil and gas pipelines and electrical powerlines that cross a national, provincial or territorial border — issued correspondence stating that "oral portions of hearings will not be held as planned" (CER Update 2020-03-16). The CER Update further states that the CER is in the process of reviewing ongoing adjudication processes to optimize participation in a way that ensures that processes continue in a manner that is fair and transparent while protecting the safety of all parties involved. Further to the CER Update, the Commission of the CER (Commission) has issued procedural directions in the context of ongoing hearings to provide guidance to hearing participants on upcoming deadlines and overall process updates.

Constraints Faced by Hearing Participants

In addition to Regulators, hearing participants — including Indigenous communities, companies and the general public — have identified challenges in participating in regulatory processes in the current environment. In particular, consultation with Indigenous communities has been affected and companies are reaching out to Indigenous communities to develop alternate consultation processes.

Creative Alternate Solutions

Set processes for ongoing hearings have been disrupted by the above-mentioned COVID-19 procedural changes. As these disruptions will likely be protracted, Regulators are considering alternate processes to allow hearings to proceed.

These are some of the solutions that Regulators may be implementing in the near future:

- Replacing oral cross-examination with written Information requests (IR) or video-conferences;
- Replacing oral arguments with written submissions or oral submissions via telephone or video-conferences; and
- Replacing site visits with video or photographic evidence.

For example, in the context of the NGTL application for the Edson Mainline Expansion Project, the Commission has stated that it is considering replacing oral cross-examination with written IR followed by written argument, or replacing cross-examination with IR followed by oral argument via videoconference and/or teleconference (C05525). The Edson Mainline Expansion Project is a proposed natural gas 85-km pipeline tying into the existing NGTL system, currently undergoing a hearing process before the CER. The CER held two Indigenous knowledge sessions in January and February 2020 and was about to initiate the process for oral cross-examination when the COVID-19 pandemic struck.

Similarly, several Regulators across Canada have transitioned their proceedings to written submissions, teleconference and other forms of digital collaboration.

Procedural Updates Released by Regulators

The table below summarizes operational changes implemented by federal and provincial Regulators in Ontario, Alberta and British Columbia.

Regulator	Update	Procedural Directions
Canada Energy Regulator	CER Precautionary Measures and Business Continuity Plans Related to COVID-19 March 16, 2020	• Oral portions of hearings will not be held as planned. • Planned meetings with stakeholders will take place by webinar or conference call.
Impact Assessment Agency	COVID-19 Update Undated	• Updates to assessments or consultation plans will be posted as soon as they are available. The Agency has suspended time limits in respect of certain projects.
Alberta Energy Regulator	AER Response to COVID-19 March 17, 2020	• Meetings with stakeholders will be held virtually, instead of in person. • Oral portion of hearings are cancelled, and AER is

		reviewing their procedures.
Alberta Utilities Commission	Bulletin 2020-06 March 12, 2020	• All public hearings, consultations, or information sessions are deferred until further notice, unless there is an essential economic requirement to proceed. In these cases, written or remote-participation options will be explored.
Alberta Surface Rights Board	COVID-19 Update Undated	• Surface Rights Board and Land Compensation Board hearings will proceed as scheduled and Telephone Mediation and Dispute Resolution Conferences will not be affected. • For oral hearings, parties will be contacted to determine whether there are unique issues that can be addressed by postponement or proceeding on the basis of written submission, or virtual conference. • For hearings that proceed in person, risk mitigation steps will be taken.
British Columbia Utilities Commission	BCUC Response to COVID-19 March 13, 2020	• All public events, including oral hearings, are cancelled until further notice. Amended regulatory timetables for current proceedings with public processes will be made available.
British Columbia Environmental Assessment Office	The Environmental Assessment Office and COVID-19 March 20, 2020	• In-person engagement activities have been suspended and will be rescheduled or adjusted to

		be virtual engagements, which will be held by telephone or over the Internet.
British Columbia Oil and Gas Commission	Information Bulletin 2020-03 March 19, 2020	• Operations are being maintained including all emergency services.
Ontario Energy Board	OEB COVID-19 March 18, 2020	• Oral hearings and technical conferences will not be scheduled in the near term. • Other events at OEB's offices will be conducted via webinar, conference call or rescheduled. • The requirement to submit hard copies with each electronic filing in regulatory proceedings is waived.

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