

2012 Budget Implementation Act
Key Amendments to the National Energy Board Act (NEB Act)¹

1. Decision-Making Roles on Pipeline and Power Line Projects	
<u>Before 2012 Changes</u>	<u>After 2012 Changes</u>
<p>The NEB made a decision on whether a major pipeline project (greater than 40 km in length) should be approved. The decision to issue a certificate was subject to GIC approval, but the decision by the NEB to reject an application for a certificate required no further approval.</p>	<p>The NEB makes a recommendation on whether a major pipeline project should be approved. GIC makes the decision.</p> <ul style="list-style-type: none"> - The Board prepares and submits to GIC a report that includes its recommendation on whether a certificate should be issued and its reasons, and setting out the terms and conditions that the Board considers necessary or desirable in the public interest, regardless of the recommendation - The report also includes the Board’s recommendation with respect to its environmental assessment conducted under CEEA, 2012 - GIC can 1) direct the Board to issue a certificate; 2) direct the Board to dismiss the application; or 3) refer the report back to the Board for reconsideration of the recommendation and/or a term or condition - Following a reconsideration, GIC has the same three options referred to above <p>(ss. 52-54)</p>
<p>The NEB made a decision on whether pipelines 40 km or length or less (and pipeline facilities) should be approved.</p>	<p>No change – The NEB makes a decision on whether pipelines 40 km or length or less (and pipeline facilities) should be approved.</p> <p>(s. 58)</p>
<p>The NEB made a decision on whether a power line certificate should be granted. The decision to issue a certificate was subject to GIC approval, but the decision by the NEB to reject an application for a certificate required no further approval.</p>	<p>No change - The NEB makes a decision on whether a power line certificate should be granted. The decision is subject to GIC approval.</p> <p>(s. 58.16)</p>

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2. Considerations when Making Decisions or Recommendations	
<u>Before 2012 Changes</u>	<u>After 2012 Changes</u>
For pipeline projects, the Board was to have regard to all considerations that appeared to it to be relevant.	The Board must have regard to all considerations that appear to it to be directly related to the pipeline and to be relevant. (s.52(2))
For power line projects, the Board was to have regard to all considerations that appear to it to be relevant.	The Board must have regard to all considerations that appear to it to be directly related to the power line and relevant. (s.58.16(2))

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3. Time Limits for Pipeline and Power Line Applications	
<u>Before 2012 Changes</u>	<u>After 2012 Changes</u>
<p>No provision regarding timeliness of project reviews</p>	<p>All applications are to be dealt with as expeditiously as the circumstances and considerations of fairness permit but, in any case, within the time limit provided for in the NEB Act. (ss. 11(4))</p> <p>The Chair may issue directives to Board Members hearing an application to ensure it is dealt with in a timely manner. (ss. 6(2.1))</p>
<p>No time limits on project reviews</p>	<p>The NEB has 15 months from receipt of a complete application to complete its assessment for applications under s. 52 (major pipelines), s. 58 (other pipelines and facilities), and s. 58.16 (power line certificates)</p> <ul style="list-style-type: none"> - The Chair sets the time limit (may be less than 15 months), which the Board is required to make public - The Chair can approve a ‘time out’ when further information or studies are required - The Minister can extend the time limit by 3 months - GIC can grant further unlimited extensions based on the recommendation of the Minister <p>(ss. 52(1), (4)-(7), 58(4)-(10), 58.16(1), (4)-(9))</p> <p>If the Chair is of the view that an NEB time limit is not likely to be met for an application, he may take any measures he considers appropriate, including:</p> <ul style="list-style-type: none"> - Removing any or all of the Members on the NEB panel - Assigning one or more new Members - Changing the number of Members - Providing direction on how s. 55.2 (standing—see below) is to be applied <p>(ss. 6(2.2))</p> <p>To ensure that the NEB report is prepared and submitted in a timely manner, the Minister may direct the Chair to set a time limit or to use the Chair’s other authorities</p> <p>(ss. 52(8))</p> <p>GIC has 3 months from receipt of an NEB recommendation report or decision (in the case of major pipelines and power line certificates, respectively) to make a decision</p> <ul style="list-style-type: none"> - GIC can grant unlimited extensions <p>(ss. 54(3), 58.16(10))</p>

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4. Standing/Participation in Pipeline Application Reviews	
<u>Before 2012 Changes</u>	<u>After 2012 Changes</u>
<p>The NEB was required to consider the objections of any interested person. The decision of the NEB as to whether a person is or is not an interested person was conclusive.</p>	<p>The NEB must consider the representations of any person who, in the Board’s opinion, is directly affected by the granting or refusing of the application, and it may consider the representations of any person who, in its opinion, has relevant information or expertise. A decision of the Board as to whether it will consider the representations of any person is conclusive. (s. 55.2)</p>

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5. Imports and Exports (Part VI of the NEB Act)	
<u>Before 2012 Changes</u>	<u>After 2012 Changes</u>
The NEB was required to hold a public hearing with respect to the issuance of gas and electricity export licences, and gas import licences.	A public hearing is not mandatory for gas and electricity export licences, or gas import licences. Whether to hold a hearing is within the discretion of the Board. (s. 24)
For oil or gas export licences the NEB was required to have regard to all considerations that appeared to it to be relevant and to satisfy itself that the quantity to be exported is surplus to Canadian needs.	For oil or gas export licences, the only consideration to be taken into account is whether the quantity to be exported is surplus to Canadian needs. (s. 118)
In deciding whether to issue a licence for the exportation of electricity, the NEB was required to have regard to all considerations that appeared to it to be relevant.	In deciding whether to issue a license for the exportation of electricity the NEB is required to have regard to: <ul style="list-style-type: none"> - The effect on provinces other than from which the electricity is to be exported - Whether the applicant has: a) informed those who have declared an interest in buying electricity for consumption in Canada of the quantities and classes of service available for sale; b) given an opportunity to purchase electricity on terms and conditions as favourable as those in the application to those who demonstrate an intention to buy electricity for consumption in Canada - Any considerations that may be specified in regulation (ss. 119.08(2))

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6. Administrative Monetary Penalties (AMPs)	
<u>Before 2012 Changes</u>	<u>After 2012 Changes</u>
<p>The NEB did not have the authority to impose AMPs.</p>	<p>The NEB Act contains an AMP scheme. The NEB is provided authority to make regulations to designate violations and to determine the amount of AMPs. The maximum daily penalty for an individual is set at \$25,000 and \$100,000 for others. Each day of the violation is considered a separate violation. Separate penalties can be issued per infraction, per day with no maximum total financial penalty.</p> <p><i>(Part IX and the Administrative Monetary Penalties Regulations (National Energy Board))</i></p>

7. Navigable Waters	
<u>Before 2012 Changes</u>	<u>After 2012 Changes</u>
<p>Authority for the crossing of navigable waters (by both pipelines and power lines) rested with Transport Canada, which issued approvals when NEB-regulated pipelines and power lines crossed navigable waters under the <i>Navigable Waters Protection Act</i>.</p>	<p>Authority for the crossing of navigable waters (by both pipelines and power lines) rests with the NEB (<i>Navigation Protection Act</i> does not apply). The NEB takes into account project effects on navigation and navigation safety for proposed NEB-regulated pipeline and power line crossings of navigable waters before recommendations or decisions about these projects are made.</p> <p><i>(ss. 58.27, 58.271, 58.29, 58.3, 58.301, 109, 110, 111)</i></p>