

# FAQs – 2012 Changes to the *National Energy Board Act*

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The *Jobs, Growth and Long-term Prosperity Act*, portions of which came into force on July 6, 2012, includes legislative changes to a number of Acts, including the *National Energy Board Act* (NEB Act). Below, you will find some information designed to help explain some of the changes.

## **What are the legislated time limits for National Energy Board (NEB) applications?**

The legislation requires beginning-to-end time limits of 18 months for major NEB applications requiring a certificate. This is broken down into 15 months from the date the Board determines an application is complete until the NEB completes its assessment with the issuance of a Recommendation to Governor in Council (GiC). From this point, GiC would have three months to make a decision.

For smaller pipeline applications, the time limit is 15 months from the date the NEB determines an application is complete until the NEB issues a decision.

The legislation also provides mechanisms to exclude the time periods required to obtain additional information or studies from the applicant. It allows provides for time limit extensions from the Minister and GiC.

With the exception of the Mackenzie Gas Project, which included a parallel Joint Review Panel, all NEB hearings in the eight years prior to 2012 were completed within 15 months from the issuance of the hearing order to the release of the reasons for decision.

## **How did the 2012 changes to the NEB Act impact participation in NEB facilities hearings?**

Previously, the NEB typically allowed all persons who were interested in a project the opportunity to participate as the legislation required the NEB to consider the objections of “any interested person”.

The 2012 changes to the NEB Act gave rise to more specific requirements for when a person could participate in a hearing to consider an application to construct a pipeline or power line. The NEB must hear from any person who, in the NEB’s opinion, is directly affected. The NEB may choose to hear from any person who, in the NEB’s opinion, has relevant information or expertise.<sup>1</sup> Due to these changes, the NEB must obtain enough information to decide whether a person should be allowed to participate, and how – as an intervenor, a commentator, or in another way. Often, this information is collected through applications to participate from persons who wish to participate in the hearing.

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<sup>1</sup> When the NEB is having a hearing about a pipeline over 40 kilometres in length, the *Canadian Environmental Assessment Act, 2012* requires that for the environmental assessment, the Board must hear from any person who is directly affected, and that it must hear from any person with relevant information and expertise.

### **How does the decision-making process work for major projects?**

The legislative changes address the time limits for NEB regulatory assessment for major projects, and provide the GiC with the responsibility to make the go/no go decision for issuing a pipeline certificate.

Previously, the NEB's decision to issue a certificate for a project was subject to the approval of the GiC. A decision of the NEB to deny a certificate was final and not subject to further approval. Now, both approvals and denials of projects must go to the GiC for a decision. The NEB's report on a project includes conditions to be attached to any certificate issued. After the NEB has submitted its report, the GiC may: (i) direct the NEB to issue the certificate; (ii) direct the NEB to dismiss the application; or (iii) refer the recommendation or any of the terms and conditions back to the NEB for reconsideration.

### **Did the Board's role change with respect to Environmental Assessments?**

For projects identified by the *Canadian Environmental Assessment Act, 2012* (CEAA 2012), the NEB will conduct an environmental assessment pursuant to that Act. For projects not identified by the CEAA 2012, the NEB will continue to conduct a federal environmental assessment as a part of its public interest mandate under the NEB Act. Environmental aspects have been addressed in Board decisions under the NEB Act since the early 1970's. In addition, the NEB has been conducting environmental assessments under the former *Canadian Environmental Assessment Act* since it came into force in 1995.

### **What are the duties and authorities of the Chair?**

The 2012 changes to the NEB require the Chair of the NEB to set time limits for project reviews and ensure these time limits are met.

The Chair was also provided with a variety of tools to make sure time limits are met and applications are dealt with in a timely manner.

### **Did the 2012 changes to the NEB Act provide the NEB with additional flexibility with regards to the appointment of Board members?**

Yes. Previously the NEB Act restricted the number of temporary Board members to six. The amended NEB Act does not have this restriction. This flexibility means the NEB can hire more temporary members.

### **How are pipelines and power lines which cross navigable waters impacted by the 2012 changes to the NEB Act?**

These amendments to the NEB Act and the *Canada Oil and Gas Operations Act* require the NEB to take into account project effects on navigation, including navigation safety, for proposed NEB-regulated pipeline and power line crossings of navigable waters before recommendations or decisions about these projects are made. Previously, this was a responsibility of Transport Canada. The NEB is now a "one window" federal regulator for NEB-regulated pipeline and power line projects that cross navigable waters.

## **What are Administrative Monetary Penalties (AMPs)?**

AMPs are financial penalties the Board imposes on companies or individuals for non-compliance with the NEB Act, regulations, decisions, permits, orders, licenses or certificate conditions.

The AMP sections in the NEB Act set out the maximum daily penalties for both individuals and companies. For individuals the maximum daily penalty is \$25,000 for each violation, and for companies the maximum daily penalty is \$100,000 per violation. The Act stipulates that *each day* that a violation continues is considered to be a *separate* violation. This means that separate penalties could be issued per infraction, per day with no maximum total financial penalty.

The AMP Regulations, which, among other things, describe what activities are considered violations, were published in the *Canada Gazette*, Part II on 3 July 2013 and are now in force.

## **Were there any changes to the way the NEB deals with an application for a gas export license?**

Following the 2012 changes to the NEB Act, hearings for gas export licenses are no longer mandatory.

The NEB Act was also amended to address what the Board may consider when deciding whether to issue a gas export license. When reviewing an application for a license, the Board can only consider whether the quantity to be exported is surplus to Canadian needs, taking into account trends in discovery of the resource. Although the previous version of the NEB Act allowed the Board to consider environmental matters, the provision which gave the Board this ability has been removed. Therefore, the NEB can no longer consider environmental matters in export applications.