



**FACT SHEET:
The Alberta Energy and Utilities Board (EUB)**

This fact sheet is intended to answer common questions that landowners and affected members of the public may have about processes governed by the Alberta Energy and Utilities Board (EUB). This fact sheet focuses on the EUB hearing process for granting licences for oil and gas development on private and public land.

- What is the Alberta Energy and Utilities Board (EUB)?
- What does the EUB do?
- Is the EUB the correct organization to approach for my concerns?
- How does an operator get an EUB licence?
- Will the operator notify me if a proposed energy project is near my property?
- If consultation is required, what does that mean?
- If notification is required, what does that mean?
- What if I have outstanding concerns about an energy project?
- Can a group object to an energy project?
- Who can ask for an EUB hearing?
- What should I consider before requesting a hearing?
- Do I need a lawyer?
- Can I get my costs covered?
- How do I find out about a hearing?
- What are the general steps in the EUB hearing process?
- What should I include in my written submission?
- What is the hearing process like?
- Can I appeal an EUB decision?
- What if I didn't participate in the EUB hearing?
- Where can I get a copy of EUB directives?
- Where can I get more information?



What is the Alberta Energy and Utilities Board (EUB)?

The EUB is a quasi-judicial (court-like), independent agency of the Alberta government. The EUB oversees energy resources and public utilities in the province. Energy resources include oil, natural gas, oil sands, coal, coalbed methane and electrical energy.

This fact sheet focuses on the EUB's regulation of energy resources. For information on public utilities, please contact the Environmental Law Centre.

What does the EUB do?

An operator must receive the EUB's permission, usually in the form of a licence, before starting any energy project. This can include drilling wells, constructing pipelines within the province, or building other oil and gas facilities. EUB permission is often required for all significant steps of an energy project.

In addition to issuing licences, the EUB sets the standards to which an operator must construct and operate a well, pipeline or other energy project, and sets standards for consulting and notifying members of the public of proposed projects. The EUB is also responsible for inspecting energy operations and responding to complaints about these operations for incidents of non-compliance with the law.

Is the EUB the correct organization to approach for my concerns?

Although the EUB handles most energy related issues in the province, it does not deal with all issues. For example, the Surface Rights Board deals with energy issues related to compensation, right of entry to land, and damages done by the operator outside of the area covered by the surface lease or right-of-way agreement.

Alberta Environment is in charge of the reclamation of oil and gas sites. Reclamation refers to restoring the land base to a state where it is capable of supporting the same kinds of land uses as before the disturbance. Alberta

Environment issues a reclamation certificate once a site has been reclaimed to provincial standards.

In addition to an EUB licence, Alberta Environment may also require approvals or licences for certain activities related to energy projects. For example, Alberta Environment is responsible for issuing approvals for large industrial activities such as oil sands mines and gas processing plants. It also issues approvals and licences for activities that affect water bodies and for water diversions. For more information about these processes, please see the Environmental Law Centre's fact sheet on Environmental Approvals and Licences.

Federal government approval is required for some energy projects. The National Energy Board approves and regulates pipelines that cross provincial and territorial borders. Some large projects, such as oil sands mines, require a federal environmental assessment. This is usually done through a joint panel consisting of members from the EUB and members of the Canadian Environmental Assessment Agency.

How does an operator get an EUB licence?

The operator is the person or company that has the right to extract the oil, gas or other mineral from the land. The operator must apply to the EUB in order to construct and operate an energy operation such as a well, pipeline or other oil and gas facility.

There are generally two types of energy licensing applications: routine and non-routine applications. Routine applications are made where there are no outstanding landowner objections and the applicant has met all technical, safety, public consultation and environmental requirements. Routine applications can be processed quickly and the operator can receive its licence within one to two days.

Non-routine applications include all applications made where there are landowner objections, community concerns or objections from competing

companies. Such applications may take months to process and may involve EUB hearings.

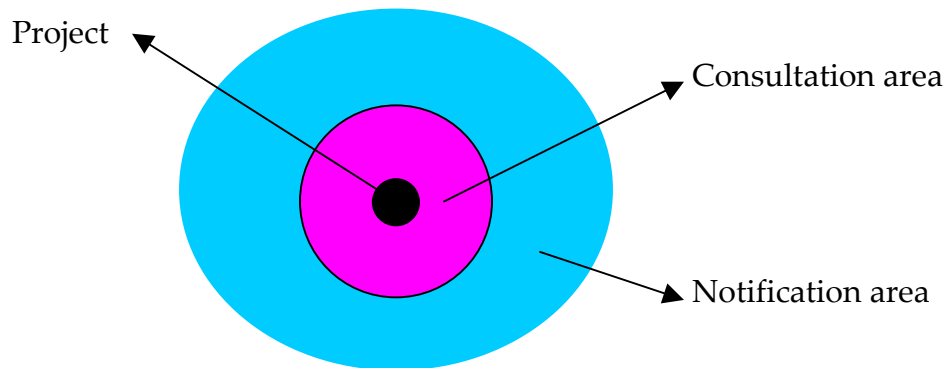
Will the operator notify me if a proposed energy project is near my property?

Any new oil and gas operation triggers the duty to consult and notify landowners and occupants within certain distances from the operation. The EUB sets out the minimum distances to consult and notify under *EUB Directive 56: Energy Development Applications and Schedules* (see Tables 5.1, 6.1, and 7.1).

The consultation and notification distances depend on:

- the type of operation (well, pipeline, or other facility); and
- the hydrogen sulphide (H₂S) or “sour gas” content of the operation.

Generally speaking, the higher the H₂S or sour gas content of the operation, the larger the consultation and notification distance is around the project.



If the proposed energy project is on public lands, Alberta Sustainable Resource Development (SRD) is considered the landowner. Disposition holders within certain distances from the project will be notified of the application.



If consultation is required, what does that mean?

If you are within the consultation area, the EUB requires the operator to conduct personal consultation (face-to-face visits or telephone contact). The operator must also provide you with their information package about the project and certain EUB documents. The operator must show to the EUB that consultation has taken place by obtaining a confirmation of non-objection. If you have outstanding concerns related to the energy project, do not sign this document and instead send a letter of objection to the EUB and the operator. If there are objections to its plans, the operator must file a non-routine application with the EUB which includes a summary of the outstanding concerns or issues.

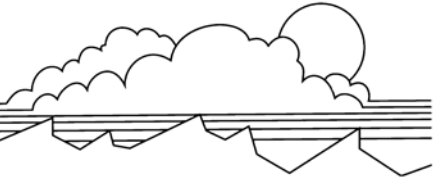
If notification is required, what does that mean?

If you are within the notification area, the EUB requires the operator to provide you with their information package about the project and certain EUB documents. If you would prefer consultation, the operator must be available to answer your questions about the operation.

Directive 56 sets out the minimum distance requirements. Even if you live outside of the distances listed in *Directive 56* you can still contact the operator if you have concerns. The EUB expects an operator to deal with all questions and objections before it files its application for a licence with the EUB.

What if I have outstanding concerns about an energy project?

If negotiations with the operator have failed and you want the EUB to address your concerns, you should submit a “letter of objection” to the EUB and send a copy to the operator. In some cases, the EUB may mail a “notice of application” to parties who have shown an interest in the proposed energy project. The notice should also appear in the local newspaper and on the EUB website at <http://www.eub.gov.ab.ca> under the heading “industry zone” and “applications.” The notice of application should state that individuals with outstanding concerns may file a submission or objection to the EUB.



Your letter of objection must explain how you will be “directly and adversely affected” by the energy project. The reason why showing you are adversely and directly affected is important is because if the matter goes to an EUB hearing only individuals or groups which meet this criterion can fully participate in the hearing process.

Start your letter of objection by explaining where you live, work or own land in relation to the proposed project. Next, give your reasons why and how you will be directly and adversely affected if the project proceeds. In deciding whether you are directly and adversely affected, the EUB tends to focus on whether the project will affect your economic interests. For example, you have a better chance of being considered directly and adversely affected if the project affects your land, your use of the land, or your livelihood. Interference with a person’s health may also be persuasive. You are less likely to be considered directly and adversely affected if your concerns are limited to general environmental concerns that are not tied to property ownership or livelihood.

Make sure you include all of your concerns in your letter of objection. Your concerns or objections may relate to matters such as potential impacts on air quality or groundwater, noise levels, how waste will be dealt with, risk of blowouts (for sour gas operations) or concerns about reclamation issues. It is important that you personalize your letter of objection. Form letters or generic letters that list general concerns are not as persuasive and the EUB may later ask that you provide site-specific details.

Lastly, in your letter state what you want the EUB to do. For example, you may request that the EUB deny the application for the energy project or add conditions to the licence if approved. Make sure to include your contact information and the energy application number in the letter.

A sample letter of objection is included in *EUB Directive 29: Energy and Utility Development Applications and the Hearing Process*.

Can a group object to an energy project?

Groups can object to an energy project by submitting a letter of objection. The group must explain in their letter how the group and its members are directly and adversely affected by the energy project. Be sure to provide the name of a contact person for the group in the letter of objection.

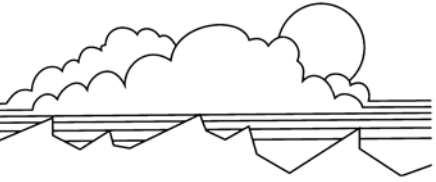
Who can ask for an EUB hearing?

Any “directly and adversely affected” person or group can ask for an EUB hearing. This requirement is set out under the *Energy Resources Conservation Act*. Persons who the EUB considers to be directly and adversely affected by its decision are considered to have “standing” before the Board. This means that the person is entitled to have full participation at the hearing or be a party to the hearing.

In determining whether you are directly and adversely affected, the EUB considers the following:

- Does the proposed project affect your safety, or your economic or property rights?
- Are you affected in a different way or to a greater degree than members of the general public?
- Is there a reasonable and direct connection between the application and the effect you are claiming?

The EUB tends to focus on whether the project will affect your economic interests, such as affecting your land, your use of the land or your livelihood. Interference with a person’s health may also be persuasive. Groups should focus on showing that they are affected to a greater degree than other members of the general public. This can be done by showing that the group has members who live in close proximity to the proposed project.



What should I consider before requesting a hearing?

The EUB encourages disputes to be resolved by negotiation or other assisted processes which are generally called “alternative dispute resolution” or ADR. The EUB will want to see that you have tried to resolve your dispute using ADR before triggering a hearing. This can include having EUB staff members facilitate negotiations between you and the operator, or appointing an independent mediator who assists you and the operator in resolving your dispute.

There are definite advantages to ADR if it is successful. The solution will often be better for both parties than the result of a hearing. However, ADR will only work if both parties are willing to participate and are open to solution. It will not work for all disputes.

You also have to consider the time and cost associated with an EUB hearing. Hearings can last from one day to several weeks and you need to consider whether you want to hire a lawyer to represent you. There are also costs associated with hiring expert witnesses to appear at the hearing in support of your position.

Do I need a lawyer?

A lawyer is not required for EUB hearings but some people find the EUB hearing process to be complex and may want to hire a lawyer. You may need to provide written arguments, present evidence, cross-examine witnesses and make presentations at an EUB hearing. EUB counsel and staff are limited in the legal assistance they can provide you. If you decide to hire a lawyer, the Environmental Law Centre can provide you with referrals to lawyers with EUB experience.

Can I get my costs covered?

Costs help cover some of the expenses associated with appearing before the EUB. Only “local interveners” are eligible to recover costs from the EUB. A local intervener is a person or group who has an interest in land and is directly and

adversely affected by the approval of the energy project. This is set out under the *Energy Resources Conservation Act*.

Being considered a local intervener does not automatically mean that the EUB will cover all of your costs associated with appearing at an EUB hearing. Costs must be shown to be reasonable and necessary for the hearing. Costs such as legal fees, consultant fees, accommodations and meals may be covered if they are reasonable. You should consult *EUB Directive 31A: Guidelines for Energy Cost Claims* to help you determine what costs are reasonable.

You must apply for costs within 30 days of the EUB's decision. Interim costs, or costs that are paid before the decision, may be available at the EUB's discretion. *EUB Guide 31A* explains the EUB's costs procedures in detail. It also provides cost forms and samples of completed cost forms required by the EUB to support a costs application.

How do I find out about a hearing?

The EUB should mail out a "notice of hearing" to all persons potentially directly and adversely affected by the application. The notice should also be published in local newspapers and on the EUB website at <<http://www.eub.gov.ab.ca>> under the heading "industry zone" and "applications." The notice of hearing should include the date and location of the hearing and deadlines for filing written submissions.

What are the general steps in the EUB hearing process?

The first step in participating in an EUB hearing is to file a written submission. The written submission is filed with the EUB and a copy is provided to all other parties involved in the hearing.

The EUB may then schedule a pre-hearing to deal with procedural matters in order to make the hearing run more smoothly. Much of the pre-hearing will focus on procedure to be followed at the hearing. Applications for interim costs, or costs that are paid before the decision, can also be heard at this time.

After the pre-hearing, the formal hearing will be held. Further information on the hearing process is described below.

What should I include in my written submission?

A written submission is similar to a letter of objection but contains more detail. Start your written submission by identifying the application number and indicating if you want the EUB to grant or deny the application for the energy project.

Next describe where you live, work or own land in relation to the project. You must clearly explain how the project directly and adversely affects you. Include as many facts as possible. If you have photographs or other evidence you will be presenting at the hearing, you should attach copies to the written submission. You must also include the names of any expert witnesses you intend to call and what evidence they will present. Attach this information to your written submission.

In setting out your key arguments or concerns, it is better if you number your arguments or address each argument in a separate paragraph. This will help focus your writing, and will also focus the EUB's attention. For your first argument, start by explaining how your facts support your the argument, set out your reasoning, and set out any supporting legislation or case precedent (such as EUB cases that support your position). Continue the same process for your second argument, and so on. EUB staff may be able to assist you in locating relevant decisions and legislation. You can also contact the Environmental Law Centre for assistance.

It is very important to personalize your written submission. The EUB does not favour generic submissions with general objections. You must provide site-specific details about how the project will impact you.

Lastly, state what solution you want from the EUB. For example, you may request that the EUB deny the application for the energy project. If this is the only outcome acceptable to you, you may decide not to volunteer any alternative

solutions. However, you should be aware that the EUB rarely denies energy applications.

On the other hand, you may decide that your concerns could be addressed in other ways. You could ask for conditions to be imposed on the operator's licence should the application be approved. For example, if you are concerned about air emissions from flaring, you could ask that a condition be added to the licence to install air monitoring equipment next to flare to monitor emissions to ensure they are within legal limits. You could also propose alternative solutions for the EUB to consider. For example, if you object to the location of the pipeline or well, propose an alternative route or location.

Consider setting these alternatives as "fall-back" positions in your written submission. In other words, you can ask the EUB to deny the application and if this is not granted, propose alternatives for the EUB to consider. The EUB is generally receptive to efforts at compromise. You should also recognize that the EUB might favour your fall-back position over a request that the application be denied. Consider these factors carefully before suggesting alternatives.

All relevant issues must be addressed in the written submission. If they are not, you may not be able to raise them in the hearing. If possible, ask an experienced lawyer to review your written submission and provide comments on clarity, language and structure. You can also review a sample written submission in *EUB Directive 29*.

What is the hearing process like?

As mentioned above, a pre-hearing may be held first to deal with procedural matters. If you plan to apply for interim costs (or advance funding for costs), this should be done at the pre-hearing. Otherwise, all other applications for costs will be heard at the end of the EUB hearing.

The EUB hearing is similar to a court proceeding. You should review the EUB's *Rules of Practice* before you participate. Copies of the *Rules of Practice* are

available from the EUB Information Services at (403) 297-8190 or from the EUB website at <http://www.eub.gov.ab.ca>.

If you do not have a lawyer, you will have to prepare and present your case to the EUB panel yourself. The panel usually consists of three EUB board members. You will make an opening statement to the panel that describes the issues you will raise in the hearing. The statement should include the topics you intend to cover, an outline of the evidence you intend to introduce, and a list of witnesses you intend to call.

Next you will present your evidence, including calling any expert witnesses. The other side may cross-examine your witnesses. Remember that any evidence you call at the hearing must have been in your written submission.

The other side will then present its evidence and you will have the opportunity to cross-examine their witnesses. When all evidence has been presented, each party will be given the opportunity to make closing arguments to the panel.

The decision of the EUB panel will be sent to all parties within 90 days of the close of the hearing. You should be aware that the EUB rarely refuses to grant an application for an energy licence. Some EUB decisions attach conditions to the licence that address concerns that parties raised with the application.

Can I appeal an EUB decision?

There are two ways that an EUB decision may be appealed or reviewed. First an EUB decision may be appealed to the Alberta Court of Appeal but only on questions of jurisdiction or law. To appeal on a question of jurisdiction means that the EUB was not the correct board or agency to make the decision or the EUB acted beyond its authority in making its decision. To appeal on a question of law means that the EUB made a mistake about the law, such as applying the wrong legal test.

You need the Court of Appeal's permission to appeal an EUB decision. You must apply to the Court of Appeal for leave to appeal within one month from when

the EUB's decision was signed. One judge from the Court of Appeal will decide whether you can proceed with the appeal. If leave is granted, the appeal will be heard by three judges of the Court of Appeal.

A second way to appeal an EUB decision is through the EUB review process. A party can apply to have the EUB review its own decision. This must be done within 30 days of the original decision being issued. A review is usually granted if there are new facts or evidence available or it is shown that the EUB made a legal or factual error that raises a substantial doubt as to the correctness of the Board's decision.

What if I didn't participate in the EUB hearing?

The EUB can make decisions without holding a hearing. If the EUB is not aware of any outstanding concerns about a project, then the operator may submit a routine application which may be approved and a licence granted without a hearing being held.

If you are directly and adversely affected by an application or licence and did not receive notice of the hearing, you can also submit an application to the EUB to review its decision. This must be done within 30 days of the decision. If the application for review is accepted, a hearing will be held. You may also request that the decision of the EUB be suspended until a decision on the review has been made.

Where can I get a copy of EUB directives?

EUB directives are available to view or download free of charge from the EUB website at <<http://www.eub.gov.ab.ca>> or by contacting the EUB Information Services at (403) 297-8190. Some of these documents are also available at the Environmental Law Centre's library.

Where can I get more information?

For general information about legal rights and processes related to the EUB, please contact the Environmental Law Centre. Further resources are included below.

Environmental Law Centre Library Resources and Online Catalogue:

Campbell, Karen. *When the Landman Comes Knocking: A Handbook for BC Landowners Living with Oil and Gas* (Vancouver: West Coast Environmental Law & Sierra Legal Defence Fund, 2004).

Griffiths, Mary, Chris Severson-Baker & Tom Marr-Laing. *When the Oilpatch Comes to Your Backyard: A Citizens' Guide*, 2nd ed. (Drayton Valley: The Pembina Institute, 2004).

Online Articles:

Alberta Energy and Utilities Board, Law Branch. "Recent changes to the EUB's cost recovery policies and procedures" (2001) 16:4 *Environmental Law Centre News Brief* 11, online: Environmental Law Centre <<http://www.elc.ab.ca/publications/NewsBriefDetails.cfm?ID=730>>.

Mallet, James. "Tips for preparing board submissions without a lawyer" (2004) 19:1 *Environmental Law Centre News Brief* 11, online: Environmental Law Centre <<http://www.elc.ab.ca/publications/NewsBriefDetails.cfm?ID=806>>.

Additional Online Resources:

Alberta Energy and Utilities Board, online: <<http://www.eub.ca/docs/documents/directives/Directive029.pdf>> - this website provides access to *EUB Directive 29: Energy and Utility Development Applications and the Hearing Process*.

Alberta Energy and Utilities Board, online:

<<http://www.eub.ca/docs/documents/directives/Directive031A.pdf>> - this website provides access to *EUB Directive 31A: Guidelines for Energy Cost Claims*.

Alberta Energy and Utilities Board, online:

<<http://www.eub.gov.ab.ca/bbs/documents/directives/directive056.pdf>> - this website provides access to *EUB Directive 56: Energy Development Applications and Schedules*.

A word of caution about your use of this material

The information provided in this fact sheet is current to July 31, 2006. While every effort has been made to ensure the accuracy and timeliness of the information, the information provided is of a general nature and is not a substitute for legal advice. The Environmental Law Centre encourages individuals to seek specific advice on matters of concern and not to rely solely on the information in this document.

The Environmental Law Centre

The Environmental Law Centre (Alberta) Society is a registered charitable organization that was incorporated in 1982 to provide Albertans with an objective source of information on environmental and natural resources law. The Centre, which is staffed by four full-time lawyers, a librarian and a small support staff, provides services in environmental law education, assistance, research and law reform. The Centre maintains an extensive library and online catalogue of environmental law materials that is accessible by the public free of charge.

ENVIRONMENTAL LAW CENTRE



Funding for the Environmental Law Centre is provided by the Alberta Law Foundation and through the generous support of the public. The Centre also accepts private and government research contracts for work relevant to and consistent with the Centre's objectives.

Alberta LAW FOUNDATION

Copyright ©2006

Environmental Law Centre (Alberta) Society

This information sheet can be reproduced for educational purposes without permission provided appropriate credit is given.