

ONTARIO ENERGY BOARD

**ROLES AND RESPONSIBILITIES OF
COMMISSIONERS AND OEB STAFF IN
PUBLIC
HEARINGS**

MARCH 2023



**Ontario
Energy
Board**

1. Introduction

The Ontario Energy Board (OEB) is the independent regulator of Ontario's electricity and natural gas sectors. We protect consumers and make decisions that serve the public interest.

The OEB's [mandate](#) and authority comes from the *Ontario Energy Board Act, 1998*, the *Electricity Act, 1998* and a number of other provincial laws including the *Municipal Franchises Act* and the *Energy Consumer Protection Act, 2010*. Among other things, electricity and natural gas utilities need OEB approval for:

- the rates that they charge their customers;
- the construction of hydrocarbon (including natural gas) pipelines or electricity transmission lines; and
- a change in the ownership or control of the utility or the sale of its assets.

In most cases, the OEB must hold a public hearing before issuing a decision on an application or on a matter that the OEB has commenced on its own motion. The purpose of this document is to describe “who does what” at the OEB in its public hearings.

There are several distinct roles for the OEB participants (OEB staff and Commissioners) in the hearing process, each of which have different responsibilities and are described in greater detail below. This document begins with the roles and responsibilities of the Chief Commissioner and of Commissioners in the hearing process (Presiding Commissioner and Panel Commissioner), and then moves to the roles and responsibilities of OEB staff (Registrar, Case Manager, Hearings Advisor, Regulatory Administrator, subject matter experts, and Legal Counsel).

This document is not intended to be an exhaustive description of every role and every function played by OEB staff or Commissioners in the hearing process. These are not formal job descriptions, and roles and responsibilities may change over time, or even with respect to a specific hearing. This document should therefore be seen as a general overview only.

The focus of this document is on hearings conducted by a panel of one or more Commissioners, other than enforcement hearings under Part VII.1 of the *Ontario Energy Board Act, 1998* (OEB Act), and not on hearings conducted by OEB staff acting under [delegated authority](#) under section 6 of the OEB Act. In practice, some of the information also applies to both of these two types of hearing.

2. Roles of Commissioners

In most cases, the OEB must hold a public hearing before issuing a decision on an application or on a matter that the OEB has commenced on its own motion. Hearings before the OEB are open and transparent. A Panel of [Commissioners](#) (Panel) is assigned by the Chief Commissioner to decide each matter, and that Panel must decide the matter assigned to it and the procedural aspects of the hearing independently and in accordance with the *Statutory Powers Procedure Act* and the procedural fairness elements of administrative law.

Typically, one to three Commissioners are assigned as a Panel. The Chief Commissioner may be a member of a Panel.

As described below, the OEB's Registrar has been delegated the authority to make procedural decisions in the early stage of most hearings, covering matters such as the completeness of an application, deciding on requests for intervenor status and cost award eligibility, and setting out the hearing schedule in cases where the procedural steps are standardized.

In all cases, final decision-making authority rests solely with the Panel assigned to decide the matter.

Presiding Commissioner

The Presiding Commissioner is appointed by the Chief Commissioner as the “lead” Commissioner on a Panel. Although the Presiding Commissioner has certain additional responsibilities of an administrative nature, for the purposes of making substantive decisions the Presiding Commissioner has no additional powers and acts in the same manner as other Commissioners assigned to the Panel.

The responsibilities of the Presiding Commissioner include:

- fostering collegiality, leading deliberations and co-ordinating Panel activities and communications;
- managing communications with the OEB staff team;
- chairing any oral component to the hearing and consulting with other Panel Commissioners on real-time procedural and substantive issues; and
- calling meetings amongst the Panel or with OEB staff as needed.

The Presiding Commissioner has the discretion to ask another Panel Commissioner to take on any of these duties.

Panel Commissioners

Commissioners assigned to a Panel (including the Presiding member) are responsible for all procedural and substantive decisions with respect to that hearing (other than decisions on certain early procedural matters that have been delegated to the Registrar). Panel Commissioners' responsibilities include:

- rendering timely and high-quality decisions on applications in accordance with applicable legislative requirements (this work would be done within a timeframe set, in some cases, by legislated time limits and more generally by the OEB's performance standards);
- hearing and deciding substantive and procedural matters in both written and oral hearings in an independent, impartial and transparent manner and in accordance with the *Statutory Powers Procedure Act* and the procedural fairness elements of administrative law;
- working effectively with other panel members to define and develop the analytical framework for individual cases;
- supporting the introduction of procedurally fair efficiencies and innovation in the adjudicative process.
- consulting with other Panel members on whether to seek peer review of their draft decision. Peer review is entirely at the discretion of the Panel and is not a mandatory practice. Peer review can facilitate high quality decision-making and regulatory consistency where appropriate. Peer review is focused on questions of clarity, broader policy issues, and consistency with OEB decisions, policy or practice. The final decision always resides with the Panel assigned to the hearing; and
- voluntarily participating in peer review if requested by another Panel.

3. Roles of OEB Staff

Given the volume, diversity, complexity and technical nature of the matters that come before the OEB, Commissioners rely on the support of OEB staff. OEB staff have a variety of backgrounds (legal, engineering and accounting, among others), and they support Commissioners by performing various tasks throughout a hearing.

OEB staff usually perform two different types of roles during a hearing. First, they provide administrative and technical support to the Panel. Second, they actively participate in the public hearing process by, among other things, reviewing and testing the evidence by asking questions of the applicant and making submissions on the public record on what OEB staff believes the public interest requires the outcome of the hearing to be.

OEB staff that participate in hearings typically include the Registrar, a Case Manager, a Hearings Advisor, a Regulatory Administrator, individual subject matter experts, and Legal Counsel. OEB staff are assigned to a hearing by OEB management based on considerations including expertise, the complexity of the proceeding and workload. They are not assigned by Commissioners.

In addition to the specific roles and responsibilities discussed below, all OEB staff assigned to a hearing are generally responsible for assisting the Panel in ensuring that the hearing is administered in a fair, efficient and effective manner and in accordance with the *Statutory Powers Procedure Act* and the procedural fairness elements of administrative law.

The Panel makes all decisions assigned to it. Certain members of the OEB staff team (principally Legal Counsel, Case Manager and/or subject matter expert) review Commissioners' decisions for completeness and clarity. OEB staff may also assist with the drafting of decisions made by Commissioners under clear direction from the Panel and in accordance with the Panel's express findings.

Note that OEB staff do not have any decision-making authority, and that all procedural and substantive decisions in a hearing are made solely by the Commissioners assigned to the case (or the Registrar in respect of certain delegated functions as discussed below). The final version of the decision is the sole responsibility of the Panel.

Registrar

The Registrar has the [delegated authority](#) to decide certain early procedural matters in most hearings. In this capacity, the Registrar makes certain procedural decisions that are binding on the parties. The Registrar's responsibilities include:

- determining whether an application is complete with respect to any relevant filing requirements;

- drafting, publishing and arranging for the service of the Notice of hearing;
- determining requests for intervenor status and eligibility for cost awards;
- issuing Procedural Order No. 1, which also sets out initial procedural steps for the hearing in cases where these have been standardized; and
- making determinations on initial confidentiality requests filed with an application, except with respect to the determination of relevance.

Typically, after Procedural Order No. 1 has been issued a Panel of Commissioners is assigned and all decision-making authority is transferred from the Registrar to the Panel, except for late intervention requests which may be decided by the Registrar. The Registrar does not make a final determination on the scope of a proceeding.

Case Manager

The Case Manager is responsible for leading the OEB staff analysis of an application and acting as the chief point of contact between the Panel and the OEB staff team assigned to the hearing. The Case Manager's responsibilities include:

- advising the Registrar with respect to whether the application is complete with respect to any relevant filing requirements;
- leading the OEB staff team in analyzing the application, preparing questions to test the evidence and preparing submissions;
- in cases where there is no Hearings Advisor, attending to routine communications with the Panel and all participants in the hearing;
- in cases where there is no Hearings Advisor, keeping the Panel informed of any procedural developments on a timely basis (e.g. correspondence received, potential delays, etc.); and
- coordinating responses from the OEB staff team to address any procedural or technical questions from the Panel.

Hearings Advisor

Hearings Advisors are assigned to large and/or complex applications at the outset of a hearing. Their role is to help “shepherd” the application through the hearing process. The responsibilities of Hearings Advisors include the following, in keeping with directions from the Registrar or the Panel (as applicable):

- assisting with the preparation of all procedural documents and correspondence;

- preparing case schedules, hearing plans, exhibit lists, etc.;
- keeping the Panel informed of any procedural developments on a timely basis (e.g. correspondence received, potential delays, etc.);
- scheduling and booking oral hearings, settlement conferences and technical conferences, including virtual events;
- working with parties to the hearing and OEB staff to ensure the hearing stays on track;
- assisting consumers and parties to the hearing with process-related queries; and
- responding to Panel questions regarding procedural matters.

Regulatory Administrators

Regulatory Administrators are members of the Registrar's Office and are responsible for ensuring the proper flow of documents in a hearing. The responsibilities of Regulatory Administrators include:

- placing materials filed with or issued by the OEB for a specific hearing on the public record of that hearing (such that they can be accessed through the OEB's document repository – the [Regulatory Document Search](#) – on its website) in a timely manner; and
- providing electronic copies of all materials filed in a hearing to the Panel and the OEB staff team.

Subject Matter Experts

In some hearings, OEB staff that are subject matter experts with specialized knowledge (for example, accounting or engineering) are assigned to an application to assist with specific issues. Subject matter experts work under the direction of the Case Manager to analyze the application, prepare questions to test the evidence and assist in preparing OEB staff submissions.

Legal Counsel

OEB Legal Counsel are assigned to all hearings. The responsibilities of Legal Counsel include:

- acting as counsel to OEB staff in the hearing and supporting and providing legal advice to the Panel on the public record (typically as part of final submissions) regarding any questions of law that arise during a hearing;

- advising on the legal requirements related to matters of practice and procedure, including the provision of notice;
- reviewing all materials submitted by OEB staff throughout the hearing, such as OEB staff questions to test the evidence and OEB staff submissions; and
- conducting cross examination and making oral submissions where there is an oral component to the hearing. Where requested by the Panel, legal counsel may also ask questions through cross examination on behalf of the Panel.



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