



Protocol for Adjusting Adjudicative Timelines

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1. OVERVIEW

This protocol establishes a mechanism for the treatment of material delays in adjudicative proceedings that are not within the OEB's control.

The OEB has established performance standards for processing applications. The performance standards set out the typical steps and number of days that it takes to hear each type of application. The OEB has committed to issue decisions within the number of days specified in the performance standard, and the OEB reports semi-annually on how well it is achieving its targets.¹

This protocol accounts for delays that are two weeks or longer, and are driven by applicant requests, or certain requests related to expert evidence, that may or may not have a defined time period at the time the request is made. In addition to accounting for delays outside of its control, the OEB has implemented a Holiday Timeout to account for the late December, early January holiday period.

In either case, the performance standards will be extended to accommodate the delay / timeout, including the planned date for the OEB's final decision.

The protocol is intended to facilitate a predictable, transparent, and mechanistic adjustment to the OEB's planned decision issuance dates so that parties to the OEB's adjudicative proceedings understand the implications of any delays in an expedient manner. The OEB posts the case schedules for cost-based rate applications and select other proceedings on its website with the updated planned decision date.

Details of the elements that comprise the protocol are outlined below.

2. HOLIDAY TIMEOUT

The OEB has established a Holiday Timeout period for the late December, early January period because of limited stakeholder availability. In addition, the OEB does not typically issue key documents during this period.²

¹ The OEB previously set a target of meeting the application performance standards 80% of the time. For Fiscal Year 2021-2022, that has been increased to 85%, and within the OEB's Strategic Plan, the OEB has committed to increasing this target to 90% of the time.

² Key documents include: a final Decision and Order, Notice of Application and Hearing, procedural order, letter to industry, and interlocutory decision (e.g., Decision on Confidentiality or Decision on Motion).

The processing of an application will be paused during this period. No procedural steps will be planned. In a proceeding where the protocol is triggered, the performance standard will be extended by the total number of calendar days associated with the Holiday Timeout period, including the planned decision issuance date.

The Holiday Timeout will commence the first day of the week in which Christmas Day falls, to the end of the week in which New Year's Day falls. The specific dates comprising the Holiday Timeout will be outlined in a letter to industry at the commencement of each calendar year.

The Holiday Timeout does not preclude any party or OEB staff from filing materials through the OEB's Regulatory Electronic Submission System (RESS) during the holiday period.

In rare circumstances, procedural events for a proceeding may need to be planned to occur during the Holiday Timeout. The OEB will work with parties to plan accordingly and accommodate schedules as appropriate.

3. DEFINED EXTENSION REQUESTS AND UNDETERMINED EXTENSION REQUESTS

3.1 Delay Threshold

For a delay to result in an adjustment of a proceeding's timeline, the delay must meet a minimum threshold of two weeks and be driven by one of the prescribed events. The threshold of two weeks was established to strike a balance in appropriately capturing delays of material length versus those that are manageable within the established performance standard.

The prescribed list of events includes the most common requests made by applicants for extensions to deadlines, such as a request for more time to respond to interrogatories, or certain requests related to expert evidence. This protocol, including the use of a prescribed list, provides a predictable, transparent, and mechanistic method to account for delays. The protocol will be reviewed from time to time to determine if amendments are warranted, including consideration of stakeholder feedback.

3.2 Defined Extension Requests

When a request for a delay occurs in a proceeding and it has a known duration of at least two weeks at the time the OEB is notified, it is called a Defined Extension Request. If the request is approved, the application will be paused³ for the duration of the delay. The delay does not change the required procedural step(s) but rather extends the date(s) on which they occur; for example, if an applicant requests more time to respond to interrogatories. In a proceeding where the protocol is triggered, the performance standard will be extended by the total number of calendar days associated with the request, including the planned decision issuance date, if the delay request is approved.

A prescribed list of events that qualify is set out below.

- An applicant is unable to complete directions for service of Notice within the established timeline
- An applicant requests additional time to respond to interrogatories and / or undertakings, and / or to file a settlement proposal, and / or to file an argument-in-chief / reply submission
- An applicant or expert witness approved by the panel of Commissioners not being available to schedule an event per the application's timeline

The protocol will not be triggered when partial filings take place (for example 80% of interrogatory responses are filed by the deadline), as long as work can continue by parties and the OEB while awaiting the remaining materials.

3.3 Undetermined Extension Requests

When a request for a delay occurs in a proceeding and the full extent of the delay duration is not known at the time the OEB is notified, and it is anticipated to be at least two weeks, it is called an Undetermined Extension Request. If the request is approved, the application will be placed in abeyance⁴. Following the re-commencement of the

³ An application is 'paused' when the delay causes the dates of the subsequent procedural steps to be postponed (e.g., dates are pushed back two weeks).

⁴ An application is placed in 'abeyance' when a proceeding can no longer continue until an event occurs. For instance, a major revision to an application such as a significant piece of new evidence must be filed, and / or the OEB must wait for external information (e.g., a court decision) before any other procedural step can occur. Once the proceeding resumes, procedural steps and corresponding dates may need to be added / modified.

proceeding, procedural step(s) may need to be added or modified depending on the nature of the delay. An example is a need for updated evidence to be filed before an application could continue to be processed, followed by the potential requirement for further interrogatories on that updated evidence once the proceeding re-starts. Once the extent of the delay is known, the performance standard will be extended by the total number of calendar days associated with any approved request once the proceeding re-starts, including the issuance date of the OEB's final decision.

A prescribed list of events that would qualify is set out below.

- The need (as determined by the OEB) for updated or additional materials to be filed by an applicant before a decision can be made
- The need (as determined by the OEB) to wait for the outcome of a court decision, or separate decision by the OEB or other authority
- Government and / or other third-party authority delays in filing necessary evidence to be included in an application (e.g., letter on sufficiency of Indigenous consultation)

Appendix A provides an overview of how a delay would be accounted for in the planning of an adjudicative proceeding.

4. MULTIPLE DELAYS

There may be circumstances where an application experiences multiple delays that do not, on their own, meet the two-week minimum threshold. If the combined duration of the multiple delays exceeds the two-week threshold, and each delay meets the criteria on the prescribed list, the application timeline will be adjusted.

For instance, if an application experiences three separate delays – each comprising five calendar days and each meets the criteria on the prescribed list – the performance standard will be extended by a total of 15 calendar days. Since the first two delays will only amount to ten calendar days, no adjustment will be made to the application timeline until / if the third delay occurs.

Appendix A

The following example demonstrates how a Defined Extension Request would be accounted for. An Undetermined Extension Request would function in the same manner, however, the length of the delay would not be known at the outset and it is possible that some procedural steps would need to be added or modified (e.g., additional interrogatories on new evidence filed).

Illustrative Example – Defined Extension Request:

Based on a March 18, 2022 application filing date, the OEB would work to issue the completeness letter by April 1, 2022 (14 calendar days to assess completeness). The completeness letter confirms that the application contains the required information and also confirms that the processing of the application has begun. The dates that comprise a proceeding’s timeline are calculated based on the applicable performance standard from the date the completeness letter is issued.

If during the proceeding, an applicant requested an additional four weeks to respond to interrogatories, the protocol would account for the delay by adding four weeks to the overall proceeding’s timeline. The expected decision date will be extended by four weeks.

The table below outlines how the adjudicative timeline would be amended to account for the four week delay.

Procedural Step	Original Proceeding Timeline		Revised Proceeding Timeline	
	Elapsed Calendar Days	Dates	Elapsed Calendar Days	Revised Dates
Completeness Letter Issued	0	April 1, 2022	0	April 1, 2022
Notice of Application Issued	10	April 11, 2022	10	April 11, 2022
Procedural Order No. 1 Issued	35	May 6, 2022	35	May 6, 2022
Applicant’s Responses to Interrogatories Received	70	June 10, 2022	98	July 8, 2022
Applicant’s Written Reply Argument Received	170	September 19, 2022	198	October 17, 2022
Decision Issued	230	November 17, 2022	258	December 15, 2022

The Decision Issued date would be revised from November 17, 2022 to December 15, 2022. Meeting the performance standard would be assessed by whether the decision was issued on or before December 15, 2022.