

ONTARIO ENERGY BOARD

GENERIC HEARINGS PROTOCOL

DECEMBER 13, 2022



Ontario
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Purpose and Scope of Generic Hearings Protocol

Introduction

Generic hearings can be held by the Ontario Energy Board (OEB) to address one or more issues common to multiple regulated entities. Unlike a policy, the outcome of a generic hearing is binding on the regulated entities that are the subject of any ensuing order.

Generic issues can arise through applications from regulated entities. They may also be identified through discussions on trends that Commissioners or OEB staff are observing in the sector.

Generic hearings are enabled by the OEB's power under the *Ontario Energy Board Act, 1998* (OEB Act) to hold hearings on its own motion.

Purpose and Scope of the Generic Hearings Protocol

This Generic Hearings Protocol (Protocol) outlines factors to be considered in deciding whether to commence a generic hearing. This Protocol applies to issues arising in live proceedings as well as issues of which the OEB becomes aware outside of that context. It is expected that the commencement of a generic hearing to examine an issue arising in a live proceeding will be the exception, not the rule.

This Protocol does not require that decision makers transfer an issue in a live proceeding to a generic process. Rather, it sets out factors that should be considered in deciding whether an issue would benefit from a generic hearing.

This Protocol does not address the question of when an issue should be determined by way of a generic hearing as opposed to through a policy consultation. The OEB has heard from stakeholders that a protocol for that purpose would not add significant value and that these matters should continue to be addressed by the OEB on a case-by-case basis.

Analysis and Assessment of a Generic Issue

This section outlines some factors to be considered when assessing whether an issue should be considered in a generic hearing. These considerations are categorized under three broad themes: Broader Applicability; Benefits of Broader Stakeholder Participation on the Issue; and Impact on a Live Proceeding.

It should be noted that the considerations outlined in this Protocol are not necessarily exhaustive nor are they independent of each other but should rather be considered collectively where applicable.

Broader Applicability

A generic issue is one that applies to multiple regulated entities within the sector. Questions to consider when assessing this category include:

- Is more than one regulated entity likely to submit an application covering the same issue?
- To what extent does the decision on the issue turn on the facts or circumstances that are specific to a regulated entity?
- Is the issue novel? Is the issue within the scope of a typical type of application?
- Is the issue addressed in an existing policy?
- Is the impact of the generic issue expected to be significant enough to warrant a stand-alone generic hearing?

Benefits of Broader Stakeholder Participation on the Issue

Commencement of a generic hearing may lead to broader stakeholder engagement on the generic issue. Questions to consider when assessing this category include:

- If the issue is part of a live proceeding, is there a risk that it may not receive adequate consideration given the other issues in that proceeding?
- If the issue is part of a live proceeding, would stakeholders that are not parties to that proceeding likely be interested in participating in a generic hearing? To what extent would these stakeholders provide a different perspective that would assist the OEB in determining the issue?
- Are there any cost and regulatory efficiency considerations in addressing the issue through a generic hearing?

Impact on a Live Proceeding

If an issue is part of a live proceeding, the referral of the issue to a generic hearing will affect that proceeding. Questions to consider when assessing this category include:

- Is the generic issue interconnected with other issues in the live proceeding? Is it possible to separate the generic issue out of the live proceeding without significantly affecting other issues in the live proceeding?
- What would be the impact on the applicant if a generic hearing is initiated? If the live proceeding is time-sensitive, could a generic hearing be completed within the desired time?

Decision-Making

Where a potential generic issue arises from an application, the treatment of that issue should be determined as early as possible.

Decision-making in relation to the commencement of a generic hearing depends on when and how the generic issue arises.

Where the issue arises from an application to which a Panel of Commissioners has been assigned, the decision on whether to separate the issue out for determination in a generic hearing rests with the Panel, following consultation with the Chief Commissioner on the merits of commencing a separate generic hearing at that time.

Where the issue arises outside of an application or arises from an application to which a Panel has not yet been assigned, the decision on whether to commence a generic hearing rests with the Chief Commissioner.

Where appropriate, the OEB may seek submissions from parties to a proceeding on whether the issue should be separated out from that proceeding for determination in a generic hearing.

The OEB does not have a set total cycle time performance standard for generic hearings. The OEB establishes a custom hearing plan on a case by case basis given the unique nature and variation of topics that could potentially be reviewed, in order to conclude such a proceeding on a timely basis. However, the OEB has established a three-month decision writing metric for generic hearings that is measured from the close of record to the issuance of the decision.



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