



# National Energy Board

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Applications - Frequently Asked Questions (FAQs) - Notice of Application and Directions on Procedure (NOA/DOP)

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## Electricity Export Permit Applications - Frequently Asked Questions (FAQs) - Notice of Application and Directions on Procedure (NOA/DOP)

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**Version 1**

When applicants seek National Energy Board (the NEB or the Board) approval to export electricity, they must apply in writing<sup>[1]</sup> to the Secretary of the Board and must give notice of their application to the public. Giving notice is accomplished through publishing an advertisement called a Notice of Application and Directions on Procedure (an NOA/DOP) and, depending on the circumstances, may include additional publication and direct service on utilities.

[1] An application for an electricity export permit is considered in a written process.

### 1. What is an NOA/DOP and what is its purpose?

Giving notice is a basic legal requirement. Any member of the public, including a company, who might be affected by a government decision, must have access to enough information about the application, and the process to consider the application, in order to participate effectively. An NOA/DOP is an advertisement in a standard format that is required to be published when applying for an electricity export permit. An applicant publishing an NOA/DOP, in both English and French, gives notice that an application for an electricity export permit has been submitted to the Secretary of the Board and is ready for review. The applicant outlines how the general public, including potentially affected parties, may participate in the review process.

### 2. What are the rules about giving notice and where can I find them?

NEB documents relating to NOA/DOPs and public notice can be found in: the [National Energy Board Act](#)<sup>[2]</sup> (the Act or the NEB Act), particularly [Part VI](#), which outlines the basic requirements; the *Memorandum of Guidance to Interested Parties Concerning Full Implementation of the September 1988 Canadian Electricity Policy* (revised 23 January 2003), also referred to as the MOG [\[Filing A05257\]](#), which provides additional information with respect to different aspects of notice that are not explicitly referred to in the NEB Act itself; and the [National Energy Board Electricity Regulations](#)<sup>[3]</sup> (Electricity Regulations), which defines notice in [section 2](#) as notice of the application for a permit, published by the applicant in accordance with [section 119.04 of the NEB Act](#). Depending on the facts, certain sections of the [National Energy Board Rules of Practice and Procedure, 1995](#)<sup>[4]</sup> may also be relevant.

[2] R.S., 1985, c. N-7.

[3] SOR/97-130.

[4] SOR/95-208.

### 3. How do applicants complete the public notice requirements?

In the case of electricity export permit applications, it is the responsibility of the applicant to complete all publication and notice requirements. The level of notice that an applicant is required to give will

vary depending on different factors. Bilingual<sup>[5]</sup> publication of an NOA/DOP in the **Canada Gazette**, Part I<sup>[6]</sup> is required for all applicants as well as in such other publications as the Board considers appropriate.<sup>[7]</sup> In addition, an electricity export permit applicant<sup>[8]</sup> is required to identify to the Board, in the application or in the NOA/DOP, whether the applicant or an affiliate has interests in generation or transmission facilities in Canada. If it does, it has the additional requirement of serving the NOA/DOP on utilities in the language of the utilities' choice as well as publishing in newspapers, both in English and in French.

[5] Since Canada is a bilingual country, all notices relating to an application to the Board must be published in both French and English. The responsibility is always on the applicant to ensure that correct notices are published to reach both official language groups.

[6] The official newspaper of the Government of Canada.

[7] Subsection 119.04 (1) of the NEB Act.

[8] This requirement does not apply to applications for border accommodations.

Finally, proof of public notice (evidence of publication and service on utilities), is required to be submitted to the NEB before the notice requirements can be considered complete.

The requirement to provide notice (as outlined in the NEB Act, the Electricity Regulations and the MOG) means that an applicant can carry out a specific procedure after considering whether this methodology satisfies the intent or purpose of notice. The applicant will be expected to demonstrate that it considered the facts and determined that the notice completed gave the maximum exposure of the application to members of the public that could be affected.

#### **4. How does an applicant decide on which utilities to serve notice?**

Where the applicant or an affiliate has an interest in facilities, the applicant has the additional requirement of serving utilities with the notice. In this case, two types of service requirements on utilities exist. First, the applicant must serve notice on any utilities, including those in neighbouring provinces, which are directly interconnected with any facility-related interests of the applicant. Second, the applicant must serve notice on those transmission utilities in Canadian service areas<sup>[9]</sup> from which exports to the United States are proposed.

[9] In the electricity industry, the term service area generally refers to the geographical area in which a transmission or distribution company has clients.

#### **5. How does an applicant decide in which newspapers to publish notice?**

Where the applicant or an affiliate has an interest in facilities, the applicant must publish in newspapers both in English and in French. The MOG identifies that the NOA/DOP should be advertised in the largest paid general circulation newspapers (in English in the English newspapers and in French in the French newspapers) in the service area(s) from which the proposed exports may originate.

If, for example, an applicant has an interest in facilities and is applying for a blanket permit<sup>[10]</sup> proposing to export from the province of Ontario only, then the most populous community in the province of Ontario would be Toronto. The applicant would then identify the English language newspaper in the Toronto area that has the most paid subscriptions. The same process would then apply in identifying which French newspaper has the most paid subscriptions. However if, for example, an applicant has an interest in facilities and is applying for a blanket export permit from all provinces in Canada, then publishing in each province is a possibility, however, a national newspaper is also an option (see Q#7 with respect to multiple service areas).

[10] Blanket export applications are applications whereby applicants request an electricity export permit without having any pre-negotiated export sales arrangements or contracts in place.

#### **6. What if an applicant cannot find both English and French paid general circulation newspapers in the service area from which exports are proposed?**

The MOG specifies that if a community does *not* have both English and French newspapers (at least one of each), that meet the definition as outlined, then the NOA/DOP can be published in both official languages in the newspaper which has the largest paid circulation in that community. At the time of

publication of these FAQs, every province has at least one English and French paid general circulation newspaper.

## **7. What if an applicant (and/or its affiliate) has assets in multiple service areas from which exports are proposed?**

The MOG states that where exports are proposed from more than one service area, publication may be made in both official languages in a nationally published newspaper.

## **8. When might a different approach to notice be more appropriate?**

Applicants can rely on the standard procedure identified in the MOG most of the time; however, as the details of every electricity export permit application will be different, applicants must keep in mind that the intent is to provide notice of the electricity export application to potentially affected parties. In determining adequacy of notice, Board review will likely focus on whether the intent of the MOG and the concept of notice have been met. That is, everyone who may be affected has a fair chance to learn about the application in sufficient detail that he or she can comment on it.

While publishing in newspapers as outlined in the MOG will meet the needs for many applications, there may be situations where other forms of notice will be more effective.

For example, in areas where other languages are spoken and/or an oral tradition is still prevalent, broadcast media such as radio or television may be more appropriate. In other areas, a newspaper published in one or several First Nation languages, instead of in English or French, may better serve the population. A third example may be sending an email to existing email distribution lists or posting to websites. Proof of publication or service using these alternative means may need to be provided through an affidavit to the Board.<sup>[11]</sup>

[11] See the rationale provided in the 2006 request [\[Filing A11957\]](#) on behalf of the Independent Electricity System Operator of Ontario (IESO) and the corresponding Board Decision [\[Filing A12014\]](#) regarding the variance requested.

Supplementing the notice method described by the MOG would not need the permission of the Board. However, varying from this method would require permission (see Q#10 regarding variance).

## **9. Can applicants be exempted from publishing in the *Canada Gazette*?**

The only exemption from *Canada Gazette* publication is where specific terrorist activity has resulted in a critical shortage of electricity outside of Canada.<sup>[12]</sup>

[12] Subsection 119.04 (2) of the NEB Act states that the "Board may waive the requirement to publish a notice referred to in subsection (1) if the Board considers that there is a critical shortage of electricity outside Canada caused by terrorist activity within the meaning of subsection 83.01(1) of the *Criminal Code*."

## **10. Are variances from publication and service requirements allowed?**

Any request for a variation from publication and service requirements, including the rationale, must be submitted in writing to the Secretary of the Board prior to filing the application. In addition, a proposed alternative for informing potentially affected interested parties must be included. Any variance to the standard procedure for publication and service requirements identified in the MOG must be approved by the Board prior to implementation.

## **11. At what point in the process do applicants provide public notice?**

The MOG indicates applicants should publish the NOA/DOP in newspapers on the same date (insofar as it is possible to do so) as publication occurs in the *Canada Gazette*, Part I. It is recommended that applicants serve the utilities simultaneously by publishing in newspapers to keep notice periods concurrent.

## **12. What length of notice period is required?**

Unless the NOA/DOP stipulates a longer period, the processing procedure as outlined in the MOG

specifies that the Board will wait for a 30-day period from the date of publication of the NOA/DOP to allow for comments by interested parties. A 30-day notice period is included in both the sample NOA/DOP in the MOG appendix as well as the electronic template located on the [Online Application System](#) (OAS).

The Board is aware that frequency of publication of newspapers may vary. The *Canada Gazette*, Part I is published weekly, on Saturdays. While most national newspapers and newspapers in larger Canadian cities are published daily, many of the smaller local and second language newspapers may publish less frequently.

To keep notice periods concurrent, notice periods in the various publications may each start on different dates but all end on the same date, with a minimum of 30 days for the shortest one.

In addition, the Board is aware that due to a host of reasons (for example, business reasons or the complexity of an application), applicants may choose to specify NOA/DOP notice periods for interested parties that extend beyond 30 days, such as 45 or 60 days.

Lengths of notice periods and applicant rights to reply should generally be the same for service on utilities as for the published NOA/DOP.

### **13. What constitutes proof of publication?**

The Electricity Regulations require proof of publication of the notice.<sup>[13]</sup>

[13] The Electricity Regulations paragraph 8 c), for border accommodations, and paragraph 9 d), for other than border accommodations (either blanket or contract specific applications).

Proof of publication in the *Canada Gazette*, Part I, is usually provided in the form of either (1) an affidavit from the *Canada Gazette* (upon request of the applicant) accompanied by a copy of the advertisement as it was published or (2) a published original of the issue in question.

The MOG states that applicants are required to file with the Board, as soon as possible after the date of publication in the newspapers, copies of each newspaper tear sheet showing the published NOA/DOP. Proof of publication in newspapers is usually provided through submitting the complete page of each newspaper in which the original advertisement was published. (See Q#16 for further discussion of tear sheets.)

### **14. What constitutes proof of service on utilities?**

Applicants typically file copies of letters to utilities with the Board as evidence of serving notice (clearly indicating the date of the letter, the addressee and full street address and references to both the application and the NOA/DOP). A cover letter is often included with this submission confirming the date(s) the letters were sent.

### **15. How are proofs submitted?**

Applicants can demonstrate adequate notice has been provided by submitting clear confirmation of each publication and service. Proofs of publication and service on utilities are generally submitted to the electronic [Regulatory Document Index](#) or faxed. Original documents follow either by mail, courier, or hand delivery to complete the filing.

### **16. What is a tear sheet, and is an original necessary?**

A tear sheet is a whole newspaper page, torn out of an original document after publication, to provide evidence that an advertisement was actually published. Pre-prints provided in anticipation of publication are not acceptable as they only show what is intended and cannot account for errors and omissions.

Paid publications are required to provide a tear sheet upon the request of the advertiser. Upon publication in the *Canada Gazette*, Part I, applicants have the option of requesting an affidavit of

publication, which is accepted as evidence that a notice was published.

Although original documents are generally required, and are typically sent by mail, courier, or hand delivery, virtual or electronic tear sheets in Adobe (.pdf) format are acceptable for submission through the Board's electronic Regulatory Document Index, followed by a printed hard-copy filing by mail, courier or hand-delivery.

Just as with any other document, for alternatives to an original tear sheet to be acceptable, whether virtual or scanned, a copy must be both clear and readable. In addition, the copy must include the standard identifiers that are usually included in the header and/or footer of the respective publication. Identifiers usually include the title or name of the publication, the publication date, the section number (and or section name, type or designation) and the page number. The information must be sufficient for any interested party accessing the NEB electronic Regulatory Document Index to reasonably crosscheck or verify the publication information.

### **17. What content needs to be included in an NOA/DOP?**

Several examples of NOA/DOPs that would be appropriate for a variety of electricity export applications have been included in Appendix I of the MOG<sup>[14]</sup>.

[14] See MOG in other official language for corresponding translated template.

Should an applicant wish to apply for a blanket electricity export permit, the NEB's Online Application System (OAS) contains links to electronic application forms, in both French and English.

### **18. Does the Board publish advertisements on the applicant's behalf?**

No, the applicant is responsible for drafting, translating, publishing and sending out all English and French notices as applicable.

### **19. What feedback can the NEB provide applicants with respect to notice requirements?**

During the pre-application stage, the Board offers applicants the opportunity to send draft NOA/DOP advertisements to NEB staff for evaluation. At that point, staff will endeavour to provide assistance to ensure that the notices comply with the basic notice requirements. Note: NEB staff gives feedback only on the limited information provided to them by the applicant. Board Members make the ultimate determination as to whether whatever notice has been given is considered effective. Once an application has been filed, no feedback other than decisions of the Board can be provided.

### **20. What happens when an interested party believes notice has not been effective?**

Interested parties should submit a complaint in writing to the Secretary of the Board as soon as possible, with a copy to the applicant. Such communication should clearly indicate: why the public notice was not effective and what action, if any, the interested party is requesting of the Board.

If the Secretary of the Board receives a complaint while the export application is still before the Board, Board Members will consider the evidence and determine whether notice was adequate. If public notice is found not to have been effective, the Board may direct the applicant to republish or serve notice accordingly.

However, if the Secretary of the Board receives a complaint after a permit has been issued then the complaint would be considered under **section 21 of the NEB Act** (which authorizes the Board to review, vary or rescind any decision or order made by it).

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