

Public Utilities Board – eyes or ears?



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The *Public Utilities Board Act (Act)* enables PUB to make its legislatively required determinations based on either paper-based (eyes) or oral (ears) reviews. While the term “hearing” usually implies an oral discussion, the Act, as is the case in many other jurisdictions, allows both forms of hearing. PUB determines whether a paper-based or oral hearing should occur based on what it considers to be the public interest, and those determinations are made on a case-by-case basis. Here’s what happens.

On receipt of an application, PUB staff conducts an analysis to determine if all the Board’s informational needs have been addressed. PUB has defined its minimum filing requirements, which serves as a checklist for municipalities. Any missing information is then collected and the application analyzed by staff members, who then prepare a summary for the PUB panel that deals with water and sewer rates – the summary may or may not include a recommendation concerning the need for an oral public hearing, and the panel makes the final determination.

In all cases, PUB requires that the municipality release a public notice of its rate proposal, as the notice is essential to ensure that rate-payers are aware of the proposal, and afforded an opportunity to provide comments. That notice usually will indicate whether the PUB foresees a paper-based or oral hearing.

What criteria does the panel use?

- If there are numerous submissions made by ratepayers as a result of the public notice, PUB generally accepts this as a sign that the process would benefit from

an oral public hearing. In some cases, this may result in a need for a second notice to advise the public that PUB has altered the review process. If this occurs, it is not an indication that PUB is siding with anyone, rather that PUB has found through experience that giving the public an opportunity to express their views and be heard often helps diffuse disagreements and discontent.

- Where a preliminary review of an application indicates the possibility that the panel will vary in its decision from the rates sought by the municipality, the panel may conclude an oral hearing would best allow the municipality to defend its proposed rates and allow rate-payers to participate in the discussion. (The Act provides PUB with the authority to vary an application.)
- Significant rate increases (PUB has dealt with proposals for increases as high as some in excess of 400%) will usually require an oral hearing, although for small utilities PUB may proceed with a panel of one. The AMM has pointed out that, even in the case of large rate increases, an oral hearing may not be necessary, given public notice, if rate-payers are clearly supportive of the need for a large increase. PUB will take the municipality’s view into account in deciding whether to proceed by way of an oral hearing.
- A lengthy interval between rate changes is a factor considered by PUB. While utilities are encouraged to review their rates at least triennially, there have been many cases with intervals much longer than that. (Providing the public a per-

iodic opportunity for input is considered an important factor.)

- There have been situations where there is local controversy which comes to PUB’s attention; in such cases, a public hearing has proved helpful in diffusing otherwise volatile situations.
- Finally, PUB always considers regulatory costs, and it is more costly to conduct oral hearings. PUB also considers whether there is likely to be ‘net value added’ by an oral hearing process.

As stated earlier, PUB decisions as to whether or not an oral hearing is required are made on a case-by-case basis, and several factors contribute to the decision, with the public interest being top-of-mind. The above are the most common considerations.

Eyes or ears? Always eyes; sometimes eyes and ears; never just ears.

In closing, PUB is pleased to be invited to contribute to AMM’s newsletter.

At a recent meeting between the AMM and PUB, AMM’s executive asked about PUB’s decision making process with respect to holding oral hearings, and what factors play a role in whether public hearing takes place as opposed to PUB just reviewing the municipality’s submission and approving the rate proposal based on representations of a municipality. This article hopefully explains PUB’s process, and will contribute to the continued effort of PUB and AMM to work cooperatively with respect to municipal water and sewer utilities. 📌



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