1

National Library
of Canada

Bibliothèque nationale
du Canada

Canadian Theses Service

Service des thèses canadiennes

Ottawa, Canada
K1A 0N4

NOTICE

The quality of this microform is heavily dependent upon the quality of the original thesis submitted for microfilming. Every effort has been made to ensure the highest quality of reproduction possible.

If pages are missing, contact the university which granted the degree.

Some pages may have indistinct print especially if the original pages were typed with a poor typewriter ribbon or if the university sent us an inferior photocopy.

Reproduction in full or in part of this microform is governed by the Canadian Copyright Act, R.S.C. 1970, c. C-30, and subsequent amendments.

AVIS

La qualité de cette microforme dépend grandement de la qualité de la thèse soumise au microfilmage. Nous avons tout fait pour assurer une qualité supérieure de reproduction.

S'il manque des pages, veuillez communiquer avec l'université qui a conféré le grade.

La qualité d'impression de certaines pages peut laisser à désirer, surtout si les pages originales ont été dactylographiées à l'aide d'un ruban usé ou si l'université nous a fait parvenir une photocopie de qualité inférieure.

La reproduction, même partielle, de cette microforme est soumise à la Loi canadienne sur le droit d'auteur, SRC, 1970, c. C-30, et ses amendements subséquents.

A Comparative Analysis
of the
Route Approval Procedures
for
Energy Transmission Corridors
between the Canadian
Federal Government and the Provinces of
British Columbia, Alberta, and Ontario

by

William John Ostafichuk, B.Sc.

A thesis submitted to
the Faculty of Graduate Studies and Research
in partial fulfillment of
the requirements for the degree of
Master of Arts

Department of Geography

Carleton University
Ottawa, Ontario
1989

copyright
1989, William J. Ostafichuk

Permission has been granted to the National Library of Canada to microfilm this thesis and to lend or sell copies of the film.

The author (copyright owner) has reserved other publication rights, and neither the thesis nor extensive extracts from it may be printed or otherwise reproduced without his/her written permission.

L'autorisation a été accordée à la Bibliothèque nationale du Canada de microfilmer cette thèse et de prêter ou de vendre des exemplaires du film.

L'auteur (titulaire du droit d'auteur) se réserve les autres droits de publication; ni la thèse ni de longs extraits de celle-ci ne doivent être imprimés ou autrement reproduits sans son autorisation écrite.

ISBN 0-315-51165-6

ACCEPTANCE SHEET

The undersigned recommend to the Faculty of Graduate
Studies and Research acceptance of the thesis

A Comparative Analysis
of the
Route Approval Procedures
for
Energy Transmission Corridors
between the Canadian
Federal Government and the Provinces of
British Columbia, Alberta, and Ontario

submitted by

William John Ostafichuk, B.Sc.

in partial fulfillment of the requirements for
the degree of Master of Arts.

THESIS SUPERVISOR

CHAIRMAN, DEPARTMENT OF GEOGRAPHY

Carleton University

April, 1989

(ii)

ABSTRACT

This thesis is based on the premise that energy transmission corridor approval procedures, either federal or provincial, should be similar if not identical.

The study reviewed selected Canadian federal and provincial legislation to determine whether that legislation ensured regional interest consideration, in an open public forum, of transmission corridor routing with emphasis on the rights of those individuals who ultimately bear the burden.

In examining that question, three provinces were selected: British Columbia, Alberta, and Ontario. The legislation of those provinces was compared to the National Energy Board's procedures. The Board is the federal agency responsible for approval of interprovincial and international pipelines, as well as international and designated interprovincial hydro transmission lines.

This paper concludes that, while each of the provinces incorporates positive features in its legislation, no one province appears to be consistent with the procedures at the federal level. Only the National Energy Board:

- (i) consolidates oil and electrical transmission corridors under a single procedure which is, theoretically, free of political influence;
- (ii) utilizes an open-public forum, through a two stage procedure, although that procedure is approximated by Alberta and Ontario Hydro; and
- (iii) establishes hearing requirements and the requirements for notices of certificate application review, detailed route review and land acquisition procedures, and compensatory items under a single statute.

(iii)

ACKNOWLEDGEMENTS

After a lengthy period of time, I have now completed my thesis. Over the past two years I have spent considerable time researching the material for this paper. My research involved not only a bibliographic/library search but telephone and personal interviews with government and industry officials in the Provinces of British Columbia, Alberta and Ontario. I would like to thank all those listed in the "Contacts" section of this paper for their help. Each and every individual listed contributed background information.

To begin, I would like to thank Messrs. T.S. Shwed and J.A. Hodges, who acted as my referees when I considered entering the M.A. programme and encouraged me in this endeavour.

I would like to thank my employer, the National Energy Board, for its continued support, both morally and financially, through my entire M.A. programme. In particular, I want to extend my sincere appreciation to my Director, Dr. P.A. Carr, for allowing me the opportunity to further my education. For the record, it was Dr. Carr who suggested the thesis topic as not only would it be an interesting subject to develop but also would be a benefit to the National Energy Board, my employer. As a result of the subject matter of the paper, I was offered not only the general services of the Board (ie. typing, library, drafting, etc.) but the use of an experienced research assistant - Mr. Gerald Augusta.

Mr. Augusta's experience was not only appreciated but used to its fullest extent. Although not responsible for the research gathering, general contents, analysis or the conclusions, Mr. Augusta did spend considerable time critiquing certain portions of the thesis and providing rewritten and at times draft versions to specific areas, adding both to the technical correctness and clarity of the document. Throughout the preparation of my thesis, I considered Mr. Augusta as a valuable advisor.

More specifically, I would like to thank Mr. Augusta for his contributions to Chapters 4, 5 and 6. In Chapter 4 (British Columbia), Mr. Augusta was beneficial in defining the "Land Acquisition and Expropriation" procedures in place in that Province. In Chapter 5 (Alberta), Mr. Augusta's review of the first draft led to

several good suggestions which were incorporated into later drafts of that chapter. Mr. Augusta, as a land-use planner (by education and experience) was most helpful in his work on Chapter 6 (Ontario). Here, where the author was well versed in the procedures of the Ontario Energy Board, for pipelines, he was less knowledgeable in the more complicated approval process for power transmission lines. Mr. Augusta's extensive editing of initial drafts were extremely important to the clarity and technical correctness of that chapter. Mr. Augusta's expertise led to the preparation of a document that was a much more professional presentation than if the author alone had been involved.

I would like to thank several people at the National Energy Board, who were instrumental in the preparation of this document, namely Mrs. J. Kralik, for providing library and research services, Messrs. R. Mallett and B. Perkins, who were responsible for the tables, graphs and charts and Mrs. J. Bolduc, who patiently "word processed" the final drafts.

I would now like to thank those at Carleton University who have been most helpful, namely, Dr. I. Wallace and Professor M. Fox. The critiques of my paper by both gentlemen were greatly appreciated.

In closing, I would like to extend my heartfelt thanks to Professor D.M. Anderson, my thesis advisor. Professor Anderson's encouragement, support and positive critiques were essential in the completion of this thesis. I would further like to thank him for his unfailing availability, even for minor concerns. Thank you Professor Anderson.

TABLE OF CONTENTS

	Page	
Acceptance Sheet	(ii)	
Abstract	(iii)	
Acknowledgements	(iv)	
Table of Contents	(vi)	
List of Figures	(x)	
List of Tables	(xii)	
List of Appendices	(xiii)	
Abbreviations	(xiv)	
Glossary of Technical Terms	(xv)	
PART I		
CHAPTER 1:		
1.1 Overview - Energy Needs	1	
1.2 The Land Use Problem	8	
1.3 The Canadian Situation	13	
1.4 Purpose and Objectives	19	
1.5 Methodology and Methodology Constraints ..	20	
PART II - Site and Route Selection for Pipelines and Powerlines		25
CHAPTER 2:		
2.1 Introduction	25	
2.2 Route Selection Process	26	
2.3 Phases of the Route Selection Process	27	
PART III - The Federal Process		
CHAPTER 3:		
3.1 The National Energy Board	29	
3.2 The NEB Route Approval Process	30	
3.2.1 Prior to March 1983	30	
3.2.2 Background to Amendments of 1983 ..	34	
3.2.3 Current NEB Procedures, Based on Bill C-60, <u>National Energy Board Act</u> amended (referred to in the text as the <u>Act</u>), 1983	36	
3.2.3.1 First Stage - General Route Approval	36	

3.2.3.2	Second Stage - Detailed Route Procedures	37
3.2.3.3	Land Acquisition	40
3.2.4	Compensation (Negotiation and Arbitration)	43
3.2.5	Expropriation (Right of Entry) ...	46
PART IV - The Provincial Process		
CHAPTER 4: British Columbia		
4.1	Overview	50
4.2	Agencies and Legislation	52
4.3	Application Process	56
4.3.1	Prospectus	57
4.3.2	Preliminary Planning Report	58
4.3.3	Application Phase	60
4.3.4	Route Approval	63
4.3.5	Notification and Hearing	67
4.4	Land Acquisition and Expropriation	69
4.4.1	Private Lands	70
4.4.1.1	Hydro Transmission Lines .	70
4.4.1.2	Pipelines	72
4.4.2	Crown Lands	76
CHAPTER 5: Alberta		
5.1	Overview	81
5.2	Agencies and Legislation	83
5.3	The Application Process	87
5.3.1	Initial Planning	87
5.3.2	Route Approval Process	90
5.3.3	Public Notification and Hearing ...	93
5.4	Expropriation and Compensation	98
CHAPTER 6: Ontario		
6.1	Overview	105
6.2	Agencies and Legislation	109
6.3	The Application Process	117
6.3.1	Initial Planning	117

6.3.1.1	Electric Transmission Corridors	117
6.3.1.2	Pipeline Corridors	122
6.3.2	Route Approval	124
6.3.2.1	Electric Transmission Corridors	124
6.3.2.2	Pipeline Corridors	127
6.3.3	Notification and Hearings	128
6.3.3.1	Electric Transmission Corridors	128
6.3.3.2	Pipeline Corridors	133
6.4	Expropriation and Compensation	135
6.4.1	Electric Transmission Corridors ...	135
6.4.2	Pipeline Corridors	144
CHAPTER 7: Case Study (Ontario Hydro)		
7.1	Introduction	149
7.2	Ontario Hydro Eastern Ontario Transmission System Expansion - Western Section	150
7.2.1	Ontario Hydro Notification - Regional Municipality of Ottawa- Carleton	150
7.2.2	Allan and Carolyn Sauve Subdivision (Case Study)	155
PART V - Conclusions		
CHAPTER 8: Conclusion		
8.1	Introduction	159
8.2	Summary of Agencies and Legislation	161
8.2.1	Federal	161
8.2.2	British Columbia	162
8.2.3	Alberta	163
8.2.4	Ontario	164
8.3	Route Approval Procedures and Notification	172
8.3.1	Federal	172

8.3.2	British Columbia	172
8.3.3	Alberta	173
8.3.4	Ontario	174
8.4	Land Acquisition Procedures	177
8.4.1	Federal	179
8.4.2	British Columbia	180
8.4.3	Alberta	181
8.4.4	Ontario	182
8.5	Ontario Hydro Case Study	186
8.6	Final Synopsis	188
	Legislation/Regulations/Guidelines	191
	Bibliography	197
	Appendix I - Personal Contacts	202

LIST OF FIGURES

Figure	Description	Page
1.1	Primary Energy Demand, Canada	1a
1.2	Natural Gas Disposition 1986	3a
1.3	Canadian Crude Oil Disposition and Imports 1986	3b
1.4	International and Interprovincial Transfers of Electricity	3c
1.5	Gas Pipeline Companies Regulated by the National Energy Board	5a
1.6	Oil and Oil Products Pipeline Companies Regulated by the National Energy Board	5b
2.1	Components Interact in All Phases of Route Selection	26b
3.1	National Energy Board Certificate Procedures	36a
3.2	National Energy Board Detailed Route Procedures	36b
4.1	Certification Procedures (British Columbia)	54a
4.2	Inter-Agency Framework (British Columbia)	55a
4.3	Energy Project Application Process (British Columbia)	56a
5.1	Regulatory Process for Transmission Line Projects (Alberta)	87a
5.2	Energy Resources Conservation Board Application Handling Procedure (Alberta)	90a
5.3	Usual Hearing and Inquiry Procedure (Alberta)	96a
6.1	Project Life Cycle of Eastern Ontario - Plan and Route Stage Studies	119a

(x)

LIST OF FIGURES

Figure	Description	Page
6.2	Basic Flow Diagram of the <u>Environmental Assessment Act 1975</u>	121a
6.3	Schematic of Study Development Leading to Leave to Construct Application before the Ontario Energy Board	123a
7.1	The Approved Plan (M3) Eastern Ontario Transmission Facilities ..	151a

LIST OF TABLES

Table	Description	Page
2.1	Components of the Route Selection Process	26a
2.2	Route Selection Phases	27a
8.1	Summary of Federal/Provincial Procedures (Public/Municipal/Provincial Input)	160a

LIST OF APPENDICES

Appendix	Description	Page
I	Personal Contacts	179

ABBREVIATIONS

cu. ft.:	cubic feet
kV:	Kilovolt (1000 volts)
MW:	megawatt (a unit of bulk power 1000 kilowatts)
NGL:	natural gas liquids
O.D.:	outside diameter
pJ:	petajoules
ppm:	parts per million

GLOSSARY OF TECHNICAL TERMS

Alignment

- The specific, surveyed location or route of a utility line.

Corridor

- The term "Corridor" has three basic uses in the transportation and utility literature.

One use of the term is as a synonym for the term right-of-way. In this situation, every single facility right-of-way or paralleling rights-of-way is called a Corridor. This is a misuse of the term and is misleading.

A second use of the term relates to the linear facility route selection process. One stage in the process involves the review of route alternatives at the regional level. A broad band between the facilities' origin and destination that has the potential to provide for a right-of-way is established. This band is then subject to a detail route selection evaluation and the alternative route alignments identified.

The third use of the term relates to the utility Corridor. In this case, a Corridor refers to a strip of land that has been set aside through legislative or other means for the purpose of accommodating future linear facilities. The land within the Corridor is allocated to specific types of linear facilities in a manner that reduces incompatibility. (Weir, C.H., et. al., 1988: p. 13-14).

Easement

- An easement is a right enjoyed by one landowner over the land of another and is obtained for a special purpose rather than for the general use and occupation of the land.

Eminent Domain

- The power to take private property for public use by the state, municipalities, and private persons or corporations authorized to exercise functions of public character.

The right of eminent domain is the right of the state, through its regular organization, to reassert, either temporarily or permanently, its dominion over any portion of the soil of the state on account of public exigency and for the public good... Eminent domain is the highest and most exact idea of property remaining in the government, or in the aggregate body of the people in their sovereign capacity. It gives a right to resume the possession of the property in the manner directed by the constitution and the laws of the state, whenever the public interest requires it (Black's Law Dictionary, 1979: 470).

Expropriation

- Expropriation is defined as "... the taking of land without the consent of the owner by an expropriating authority in the exercise of its statutory powers..." (Ontario Expropriations Act, R.S.O. 1970, C. 145).

Hydrogen Sulphide Isopleth

- An imaginary line joining points of equal concentrations of hydrogen sulphide by volume.

Mole

- The weight of any substance in grams numerically equal to its assigned molecular weight. e.g. (32 grams of oxygen constitute 1 mole of O₂ molecules and a mole of H₂ molecules is 2 grams).

Plans, Profiles and Books of Reference

- PPBoRs are drawings that consist of three parts:
 - (i) the plan which sets out the exact location of the facility (normally a photo mosaic with appropriate survey points);
 - (ii) the profile which is a continuous plot of the elevations along the route; and
 - (iii) the book of reference which sets out the name of the owners/tenants and the right-of-way requirements (length, width, acreage and land description).

Right-of-Way

- An accurately located strip of land with defined width, point of beginning, and point of ending. The area within which the user has authority to conduct the operations approved or granted by the land owner in an authorizing document such as a permit, easement, lease, license, memorandum of understanding, etc.

Sour Gas

- Gas found in its natural state, containing such amounts of compounds of sulphur as to make impractical to use, without purifying, because of its corrosive effect on piping and equipment.

PART I

CHAPTER 1

1.1 Overview - Energy Needs

Energy. Few argue with the contention that energy drives the economy; enhances the social fabric and national life style; and, will continue to increase in demand with population growth. That projected growth of energy demand, in Canada, as shown in Figure 1-1, is 35% over the period 1983 to 2005 (National Energy Board, 1984: 100).

Similarly, when discussing energy, few people recognize the implications of increased energy development: the requirement for pipelines, compressor/meter stations and valves for oil, gas and hydrocarbon product transmission; and, tower structures, power lines, transformer and distribution stations for electrical transmission. The land requirements for those facilities, considered to be linear developments, can seriously threaten appropriate resource management and seriously distort land-use planning from the national level down to the individually affected landowner. The issue of the impacts of the procedures for land acquisition on individual land owners is the primary concern of this study.

Figure 1-1
Primary Energy Demand*, Canada

9 538 PETAJOULES
1983

14 603 PETAJOULES
2005

* Hydro and nuclear converted at 10⁴ PJ/TWh (fossil fuel equivalence)

Source: National Energy Board
Canadian Energy Supply and Demand 1983-2005
Technical Report, September 1984

Major oil, gas and hydrocarbon products pipelines normally range from 20 to 48 inches outside diameter (O.D.) and operate at pressures of up to 1200 pounds per square inch. While regulations vary, the easement requirement to allow for operation, maintenance, and repair, normally has a breadth of 60 feet. For a one mile length, an easement consumes over 7 acres of land and generally restricts any further development. Restriction in development is to protect the integrity of the pipeline.

Electric transmission facilities, the major lines of which carry from 138 kilovolts (kV) to 500 kV and above, require variable height, spacing and easement requirements. The smallest transmission line, for 138 kV, has a tower approximately 55 feet in height, requires pylon spacing of 250 yards (7 pylons per mile), and has an easement width of 45 feet. Over a one-mile distance, the easement consumes 5.5 acres of land, restricts certain developments, and eliminates other land-uses due to pylon footings. The largest transmission line, for 500 kV, has a tower approximately 130 feet in height, requires pylon spacing of 440 yards, and, has an easement width of up to 250 feet. Along a one-mile distance, the easement consumes 30 acres of land and restricts structural developments (Ontario Hydro, 1978: 4).

None of the preceding discussion has any relevance until the reader recognizes which areas of Canada require major quantities of energy and where that energy source is found. Understanding that, it becomes considerably easier to identify the difficulties that transmission corridor development imposes on resource management and land-use planning. Figures 1.2, 1.3 and 1.4 illustrate the major flows of natural gas, crude oil, and transfers of electricity, respectively.

Historical development processes have concentrated Canada's population along the Windsor-Québec City (Great Lakes) Axis, - (39%); along a north westerly axis extending from Winnipeg, through Regina to the area defined by Calgary and Edmonton, (9%); and, within the Greater Vancouver - Fraser Valley area, (6%)(Corpus Almanac & Canadian Sourcebook, 1987: 5-3)*. Those areas are the major energy consuming areas and, barring major policy shifts in development trends, will continue to be so.

Existing, actively producing major hydrocarbon resources, on the other hand, are distributed north westerly from southern Alberta, through the Peace River

*Note: % estimates are based on populations for major cities, hence the estimates are low as overall percentages by regions described.

Natural Gas Disposition 1986

(Billions of Cubic Metres)

This figure illustrates the major flows of Canadian Gas from sources of supply to markets. Each arrow is proportionate in width to the volume of gas which flowed in 1986. The numbers in this table have been rounded.

Source:

National Energy Board,
1986 Annual Report

Figure 1-3

3b

Canadian Crude Oil Disposition and Imports — 1986

(Thousands of Cubic Metres per Day)

International and Interprovincial Transfers of Electricity

(Gigawatt Hours)

Note

Data for interprovincial transfers of electricity are from 1 November 1985 to 31 October 1986 and are compiled from "Statistics Canada Electric Power Statistics Monthly."

Source: National Energy Board,
1986 Annual Report

area of British Columbia and Alberta, to Norman Wells, North West Territories. Other significant reserves, yet to be developed, occur in the Mackenzie Delta, the Arctic Islands, and the Scotian Shelf. However, by far the most significant resource - containing 90% of Canada's future reserves - is the Athabasca tar sands deposit which extends through northern Alberta (Energy Resources Conservation Board, 1985: 7).

The scenario for electric power generation is quite different. Ontario has harnessed the majority of its hydroelectric resource, whereas northern Québec and Newfoundland (Labrador) still have vast untapped potential. Manitoba and British Columbia also have formidable hydroelectric generation potential. Hydro generation, however, is not the only source of electricity; there is nuclear, coal and gas, and wood-pulp thermal generation. Public perception of the nuclear component, its technology and cost, have restricted development within major energy demand centers and, generally, across Canada. Coal fired facilities are increasingly expensive (and will invariably escalate as improved removal of SO_2 and SO_3 becomes mandated) to operate for the power generated and gas fired plants rely on national scale gas transmission. Wood-pulp thermal generation, with other fuel types, represents less than 1% of current electric generation, is

resource based and hence, highly localized (National Energy Board, 1984: 54).

It is evident that extensive transmission corridors are needed to link supply (resource location) to demand (population). Figures 1.2, 1.3 and 1.4 illustrated the major flows of natural gas, crude oil, and transfers of electricity respectively; figures 1.5 and 1.6 indicate international and interprovincial gas, oil and product pipelines corridors respectively. It is that linking, from the engineering and economic perspective of straight line-least cost, which is the complicating factor in land resource management and land-use planning.

Land resource management may be described as the identification, assessment and classification, and policy formulation for the efficient use of finite resources and efficient continuing use of renewable resources having the least impact on other related or dependent resources. Generally, the resource categories which are managed include soils and agriculture, sand and gravel, mineral deposits, forests and their productivity, water and its quality and quantity, and the cultural and biological resources. The vast majority of resource management responsibilities fall to provincial bodies, often influenced by lobbying groups represented by industry, commerce, and conservationists.

Figure 1-5

5a

Gas Pipeline Companies Regulated by the National Energy Board

Source

National Energy Board,
1986 Annual Report

Oil and Oil Products Pipeline Companies Regulated by the National Energy Board

When considering transmission corridor developments in terms of each of the previous resource categories, it is not difficult to understand some of the implications. Regardless of easement width, transmission corridors require construction, with the associated impacts of soil erosion and compaction; generate concerns for topsoil preservation and ground water flow/percolation disruption; utilize and potentially "sterilize" valuable granular material; restrict underground and surface mining development through the use of explosives (especially high vapour pressure pipelines); require vegetation removal and maintenance of the clearing; may alter water run off flows and characteristics; may permanently alter the fabric of important cultural sites and habitat areas; and, may affect access as there would be limitations to crossings.

Land-use planning embodies all of these resource management considerations from the local municipal, regional and provincial levels, to the federal level. Land-use planning may be differentiated somewhat from resource management in that planning is generally directed more to urban population growth and the wise and efficient use of land, to accommodate that growth while considering the resources affected. In many instances, resource management plans are regarded as equivalent to land-use plans. The power to control development, however, is

dependent on the legislative mandate of the administering agency, the ratio of private-to-crown land, and the statutes and powers of municipal organizations. As well, land-use planning indirectly influences necessary expenditures for municipal services such as sewers, roads and recreational areas.

The implications of major transmission facilities to land-use planning are many and varied. The linear nature is not readily conducive to the existing infrastructure of roads and sewers. The land-use planning areas affected are not, generally, the receiving points for the energy transmitted. Hence, those transmission facilities are not readily accommodated within road, sewer, or utility easements. The overall orientation of the transmission corridor may not even coincide necessarily with large scale utility planning such as one finds in the Metro Toronto Parkway Belt West Plan, or the Edmonton Transportation/Utility Corridor. However, more and more support is being given to the corridor concept as a means of providing right-of-way space for linear facilities while mitigating the adverse social, economic, and environmental impacts associated with those facilities (Weir, C.H. et. al., 1988: 1).

1.2 The Land Use Problem

More specific considerations introduced by transmission corridors are the effects on individual land owners. Those individuals may either:

- (i) own or rent land desired by the transmission facility; or
- (ii) own or rent land immediately adjacent to those lands to be used for transmission facilities.

Property ownership involves several distinct interests or rights, which can be held separately and which when taken together represent a "bundle of rights". The largest bundle of rights a private owner can hold in real property is known as complete ownership or as owner in "fee simple". Every fee simple owner holds a bundle of separable property rights, which include the rights to: possess and use, sell, devise, lease, mortgage, subdivide, and grant easements. Fee simple ownership, although the broadest and most complete concept of property ownership, only allows for exclusive but not absolute rights. Due to their public nature, four important rights are never included in fee simple ownership. These include the public rights of taxation, taking for public use, regulation, and

escheat (Barlowe, R., 1978: 398). The taking for public use, a power given to government through eminent domain, is the general subject of this study.

An important power entrusted with government is that of eminent domain. This concept, which literally means "highest authority or dominion", involves "the power of the sovereign to take property for public use without the owner's consent" (Barlowe, R., 1978: 588). Following its recognition by the courts, the power of eminent domain was accepted as an established feature of law, subject to three important modifications:

- (i) the federal and state governments can delegate this power to other units of government, and to public and private corporations;
- (ii) the power must always be used for a public purpose; and
- (iii) just compensation must be paid for all properties (Barlowe, R. 1978: 589).

From a public point of view, eminent domain may be regarded simply as a necessary power that must be used, from time to time, to facilitate the acquisition of land for public purposes. Numerous problems can be associated with the exercise of this power. Barlowe, in his book, Land Resource Economics, sets out five important problems that arise in the use of eminent domain, namely:

- (i) the initial decision to take property for public use;
- (ii) a proper delegation of authority for this purpose;
- (iii) compliance with the prescribed condemnation procedure;
- (iv) determination of just compensation, and
- (v) the question of how much property can be taken (Barlowe, R., 1978: 592).

All five problems referred to by Barlowe are addressed, in one way or another, in this paper. However, the author is of the view that there is a sixth relative problem which is the specific subject of this paper. That problem is the perception by the public of the fairness of the procedure.

While property rights are not entrenched in the Canadian Constitution (i.e. the right of eminent domain still being in effect) there are a considerable number of lesser common law and other property rights enjoyed in the three provinces which are reviewed in this thesis. The most important common law and property ownership rights, in terms of the subject of this thesis, are:

- (i) "The prima facie right of a property owner to do with his land what he will, subject to common law rights and validly enacted zoning by-laws; and
- (ii) The right to reasonable enjoyment, quiet and personal freedom. If nuisance interferes with a private right it is a "private nuisance" (where a nuisance amounts to an interference with a public right it is a public nuisance)". (Makuch, S.M., 1983: 255)

Once a public authority commences to expropriate property, then the rights of the individual, as referred to above, are suspended. The individual could not use his common law rights to prevent the public agency from proceeding with their project or "taking" any property rights required for the project, and the relevant Expropriation Acts become the operable body of legislation. An expropriation represents legally a taking and is regarded as one of the most serious legal procedures that a public authority can initiate. In most cases the public authority will make several attempts to acquire the required property rights from the individual on a "willing buyer/willing seller basis". Proceeding to the expropriation stage normally means that the individual cannot agree on an acceptable amount of financial compensation to be awarded by the expropriating authority or on the need for the taking.

Obviously, the expropriation procedure is adversarial in nature, with the expropriating authority having all the force-of-law to get the property rights it requires. It is an "absolute power", and court challenges have rarely* if ever been successful. As such, political

* While an exhaustive review of expropriation case law might reveal some cases where the expropriating authority lost the right to expropriate, such a review is beyond the scope of this paper.

authorities, which are responsible for drafting legislation, have taken considerable steps to ensure that the expropriation process protects and compensates as fairly as possible those individuals whose property rights are being taken from them.

The author's position is that those bearing the burden of transmission facility development should be assured certain rights. These rights are: the right to participate in transmission route location; the right to discuss actual above-ground structure locations on individual properties; and, the right to adequate compensation and damage determination.

The importance of those rights increases dramatically when considering Canada's position with respect to the United States. This overview has presented, briefly, the energy background in Canada. Canada represents the largest oil exporter to the United States and has been identified as the potentially largest exporter of natural gas in the near future (currently it is 4th). From a review of currently proposed provincial electric transmission projects (i.e. B.C., Site C; Manitoba, Limestone Project; Saskatchewan, Souris River Project; Québec, James Bay; New Brunswick, LePreau II) emphasis

justifying the development comes from exports to the U.S. Increased export will mean increased requirements for transmission corridors. It is evident, then, that many individual Canadians are and will be bearing additional burden for their southern cousins.

1.3 The Canadian Situation

In Canada, major energy transmission projects are either federally or provincially authorized by "certificates of public convenience and necessity, orders or permits". Generally speaking, federal authorization under the auspices of the National Energy Board extends to interprovincial and international pipelines for gas, oil and products transmission, and international or designated interprovincial electric transmission facilities. The former authorization does not normally include production facilities and associated laterals to link production to the main transmission system. For the latter authorization, the federal jurisdiction has been determined as commencing at the nearest substation to the international border and includes the transmission lines from that substation to the border. That authorization has never extended to the actual generation source.

Provincial jurisdiction covers the remaining facilities for energy transmission. Exploration, development, and production within a province are controlled by that province. This does not demean in any manner the provincial responsibility. Major pipelines, exceeding 20 inches O.D., are administered by the provinces, as are 500 kV transmission facilities. It is only where those facilities become, through connection, interprovincial or international that the administering agency changes to the federal level.

Historically, certificates of public convenience and necessity, issued by the federal or provincial government, have had their emphasis on the "public necessity" component in order to serve Canadians equally and to enhance the competitiveness of manufacturing industries within Canada on the predominantly U.S. export market. Today, major energy projects of the provinces are coming to be related more and more to the export of raw or processed energy, as an industry itself, rather than for internal use within Canada. That shift, increased public awareness of the related environmental issues, and the questions of the need to export the energy, has increased the demand for a thorough consideration of the "public convenience" component of authorizations.

Today, individual citizens, citizen groups, environmental groups, elected administering agencies, and regulatory agencies are concerned about both the impacts of a proposed large scale energy transmission project on lands specific to their interests and their right to ensure that their concerns are adequately addressed during the authorization process. For individual landowners, each public hearing in the approval process is one more step in which they can present their concerns relating to personal constraints, route location or design, and land requirements. That opportunity is beneficial to a utility proponent as, even though time requirements for approvals are lengthened, the possibility of improved mutual agreements is enhanced. As will be seen later in this paper, an apparent lack of communication/notification has become a problem for Ontario Hydro. In that situation, residents of the Bridlewood Community in Kanata, Ontario, have challenged Ontario Hydro's proposed route through their area.

The most recent formal criticism (critique) of approval processes of energy transmission projects was developed by the Canadian Law Reform Commission (1975: 38). That critique was directed at the federal level, specifically to the National Energy Board (NEB), the two principal functions of which are to:

- i) regulate specific matters concerning oil, gas and electricity in the public interest; and
- ii) advise the Government on the development and use of energy resources (National Energy Board, 1986: 4).

The thrust of the Law Reform Commission's criticism was directed at the then existing federal expropriation procedures which had been adopted from the Railway Act and which had remained unaltered since 1919. In viewing that procedure, the Law Reform Commission considered the entire approval process of an energy project as a part of the expropriation procedure.

At the time of the Law Reform Commission review, the NEB utilized a one-stage, one-hearing approach in its review and approval process for major pipeline developments. During the single public hearing, both the public convenience and necessity and the general route were considered. That was the only stage at which review of the route and concerns of landowners was allowed. As only a general route was defined at the hearing stage, landowners, in many cases, would not be aware of the specific implications of the project to their land.

In its review of expropriation procedures, the Law Reform Commission, in Commission Working Paper 9 (1975), criticized the NEB for its route selection and land acquisition procedures. Specifically, the Commissioners indicated that no opportunity was afforded landowners to question the detailed route selected by a pipeline company, nor was there a codification of the types of damage which should be compensated for - a feature which has become common to modern expropriation statutes, including the 1970 Expropriation Act of Canada.

One of the Commission's series of recommendations concerning the approval of a specific right-of-way introduced the following elements:

- "1. All affected persons should be notified of the company's application. So too should other persons, in the discretion of (the CTC or) NEB, where their participation in this stage would be beneficial.
2. All such persons should be given the opportunity to participate in a public hearing, held primarily to determine the best possible location of the right-of-way, for all interests concerned. While location would be the major issue under consideration, questions of necessity not reasonably foreseeable at the previous hearing would also be relevant.
3. The (CTC or) NEB would submit a report of findings and opinions arising from the hearing to Cabinet, or an individual Minister, for approval or rejection.

4. Following the Cabinet's approval, the plan, profile and book of reference when registered in an appropriate land registry office would effect expropriation." (Law Reform Commission 1975: 39)

Eight years following the Law Reform Commissions Working Paper, the House of Commons' Bill C-60 (An Act to Amend the National Energy Board Act) was proclaimed on 1 March 1983. Those amendments incorporated substantially all of the major recommendations of the Law Reform Commission. In doing so, the federal government relied heavily upon two provincial statutes, the Alberta Surface Rights Act and the Saskatchewan Surface Rights Act. In his address to the House of Commons on 6 March, 1981, the Honourable Marc Lalonde, then Minister of Energy, Mines and Resources, stated that Bill C-60 was designed to:

- "(1) modernize the statutory procedures used by pipeline companies under federal jurisdiction to acquire lands for their pipelines;
- (2) expand the rights of landowners to inquire into the appropriateness of a route selected by a company; and
- (3) expand the rights of landowners as to compensation." (Dunsmore 1982: 67)

1.4 Purpose and Objectives

This paper examines the question of whether or not the provincial governments of the Provinces of British Columbia, Alberta, and Ontario, or the federal government through the National Energy Board, hereinafter referred to as the NEB or the Board, have in place controlling legislation which ensures maximum regional interest consideration, in an open public forum, of transmission corridor routing, with emphasis on the rights of those individual landowners who ultimately bear the burden for all Canadian citizens.

The outstanding question is whether or not the recent amendments to the National Energy Board Act do, in fact, modernize the statutory procedures and expand the rights of landowners. More specifically, does federal legislation for energy transmission corridor development, with respect to the fair and equitable treatment of the proponent and individual landowner, offer similar or enhanced procedures to those statutory requirements which now exist in major energy producer and consumer provinces? That question is the focus of this paper.

1.5 Methodology and Methodology Constraints

In examining the question of procedure, three provinces were selected: British Columbia, and Alberta, as they are current major energy producing provinces with significant potential for energy export; and Ontario, as it is the single largest energy consuming province with the largest population and existing urban infrastructure to promote future development. The two energy producing provinces were selected as their historic energy sector growth suggested a mature system for corridor development, approval and review. It was opined that other provinces, such as Newfoundland, Quebec, and Manitoba, which are only recently moving into major energy export (hydro), would not have had the opportunity to revise either their approval processes or review procedures. Ontario has the largest population, 9,234,200 people (Corpus Almanac & Canadian Sourcebook, 1987: 5.2) of all Canadian provinces; with its associated large scale industrial and commercial components, it has had its legislation proceed to accommodate demand while ensuring consideration of public perceptions. Major oil, gas, and electric transmission lines traverse the province. No other province has experienced that degree of corridor development.

For those three provinces, the author compiled, through personal communication and meetings, a considerable amount of literature concerning legislation, its application, and procedural policy. That information was verified and enhanced by computer assisted bibliographic documentation on linear developments and through monitoring and attendance at current project proceedings. Having compiled that material, an analysis was undertaken of the current practice and procedure based on the following selected questions associated with the initial problem area for research.

Those questions were:

- (i) are the information requirements to be provided by a proponent to justify a route under the NEB Act and regulations equivalent to or in excess of those requirements of provincial statutes?
- (ii) are the procedures in the NEB's route approval process (filing, information, hearings, etc.) equivalent to or in excess of provincial requirements?
- (iii) is the opportunity afforded to the public to participate in route selection approval under the NEB Act equivalent to, or in excess of provincial requirements with respect to:
 - (a) general route approval?
 - (b) detailed route selection?
 - (c) acquisition of land? and
 - (d) expropriation and compensation? and

- (iv) were the amendments made to the NEB Act sufficient in light of current provincial procedures to allow equitable treatment no matter what jurisdiction?

The paper is organized into five sections: the introduction; a description of the federal process (as amended in 1983); descriptions of each of the provincial procedures - British Columbia, Alberta and Ontario; and, the conclusion. Each Chapter, including the conclusion, is headed by an overview of the system. To further enhance the reader's understanding of the information, the federal and provincial procedures are described by components including, where applicable: agencies and legislation, initial planning, route approval procedure, notification and hearings, awarding of costs, expropriation and compensation, entry fee and payment determination for right-of-entry. Following this format, the final chapter contains a review of each component of the provincial and federal processes; evaluation of the adequacy of each in relation to the federal process with respect to fairness and equitability; and, following the review, presents the author's conclusion. In addition, a chapter has been included which deals with a specific case study. The case in question involves Ontario Hydro's Eastern Ontario Transmission Project.

One of the most important decisions taken in the development of this thesis was that of its focus. Several scenarios were studied involving combinations of processes and specific case studies.

The methodology used for this thesis does not directly examine in an empirical way (by valid information based on case studies) the question of how "fair" and "just" the procedures for expropriation are in reality. It is opined, by the author, that an examination of this question, utilizing the rules of sociological methods, is simply beyond the scope of this thesis. To do this topic "justice", a major undertaking would be required to collect data suitable for empirical measurement. Even then, the concepts of "fairness" and "justice" are subjective, and would require considerable research to determine if the individual's concept of justice reflected a "public" concept of justice (i.e. how close did the compensation requested match the compensation offered by the expropriating authority, or eventually "ordered" by an independent tribunal).

The author suggests that this would make an excellent thesis topic, particularly for someone interested in public administration.

Notwithstanding the above, the author considers this subject to be of sufficient importance to the construction of this thesis. To that end, he has endeavoured to provide, in Chapter 7, some detailed observations on how "fair" and "just" were the procedures used in a specific public authority project. Specifically, I will deal with Ontario Hydro's Eastern Ontario Transmission System - West Section within the Regional Municipality of Ottawa - Carleton (RMOC). These observations may be regarded as subjective by some; the author acknowledges that the observations are not based on extensive data, but considers them none-the-less as valid observations.

PART II

CHAPTER 2

SITE AND ROUTE SELECTION FOR PIPELINES AND POWERLINES

2.1 Introduction

In Canada, the route selection process for pipelines and powerlines, which includes locating major linear developments, evaluating alternative routes, and selecting a final route location, has evolved over several decades. Today, increasing land-use pressures and a rising level of involvement by regulatory agencies and concerned citizens have made the process more complex.

Historically, route selection review was largely a technical process. Engineers and economists provided most of the input to the selection of routes for major pipelines and powerlines. Today, people representing resources such as fisheries, wildlife, agriculture, recreation, parks, forestry and landscape, and a host of other specialists and interested parties contribute to the process.

In this chapter, the author presents and explains a model route selection process that has been established in Alberta by the Alberta Energy and Natural Resources Ministry. This process should not be confused with the legislative processes which are the main topic of this report. This chapter has been included to illustrate the established process that has evolved, and that a proponent would follow today in selection of a transmission corridor.

2.2 Route Selection Process

Route selection for a linear development consists of engineering, socio-economic, and biophysical components (Table 2.1). To be effective, any study must consider all three components from the outset and integrate the significant aspects of each throughout the route selection process (Figure 2.1). The importance of considering all three from the outset is to ensure that the process is not biased from the engineering and costs perspective prior to consideration of the biophysical and socio-economic components.

Any linear development is faced with constraints in one or all three components, due to distances, nature of the terrain, increasing land-use pressures, and potential conflicts with resources and other resource users. In

Table 2.1
Components of the Route Selection Process

26a

Biophysical	Socio-Economic	Engineering
Biophysical setting	Employment	Design standards
Land-use and land capabilities	Population	Length
Aquatic systems	Housing requirements	Safety
Atmospheric conditions	Services	Reliability
Environmental hazards	Community land and infrastructure	Capital maintenance costs
	Regional infrastructure	Quality of service
	Social adjustment considerations	Terrain
		Climate
		Strategic nodes

Source: Alberta Energy and Natural Resources
The Route Selection Process
A Biophysical Perspective

Figure 2.1
Components Interact in All Phases of Route Selection

26b

Source: Alberta Energy and Natural Resources
The Route Selection Process
A Biophysical Perspective

uninhabited areas, the biophysical component of the environment is very significant, whereas in areas of intensive land-use the socio-economic component becomes quite significant. A proponent of such developments must present the advantages and disadvantages of alternative proposals, the rationale behind choosing a particular route, and the trade-offs made. In this manner a sound proposal can be successfully defended before various interest groups, government agencies and landowners.

The goal of any route selection study is to define a single route that represents a reasonable and equitable compromise between the three components. It is thus self-evident that the route selection process is or should be a multidisciplinary process.

2.3 Phases of the Route Selection Process

The process for route selection consists of two distinct phases with each phase generally containing six steps (Table 2.2).

Phase 1 is carried out at a "regional level" to identify broad feasible alternative routes. At this scale, the alternative regional study areas are known as corridors, which are wide, elongated land areas that are

Table 2.2
Route Selection Phases

27a

Phase 1 Regional Study	Phase 2 Detailed Route Selection
Objective To locate, assess, and compare regional study corridor(s). Steps <ol style="list-style-type: none"> 1. Identify study area size and shape. 2. Compile and analyze biophysical data (existing in many cases as published small-scale maps and records).* 3. Identify alternative corridors. 4. Identify impacts along corridors. (Reconnaissance site investigations are required for such things as potential river crossings.) 5. Measure impacts. 6. Rank corridors according to least environmental impacts. 	Objective To locate, assess, and compare routes within preferred corridor(s). Steps <ol style="list-style-type: none"> 1. Determine study area by corridor boundaries. 2. Conduct detailed biophysical data inventory and analysis within preferred corridor(s). (Site investigations.) 3. Identify routes and route alternatives within preferred corridor(s). 4. Identify impacts of the chosen route(s). 5. Measure impacts of the chosen route(s). 6. Rank routes by least environmental impact.

Note: Successful selection of a route is followed by detailed design and construction.

*Engineering and socio-economic data are analyzed concurrently.

Source: Alberta Energy and Natural Resources
 The Route Selection Process
 A Biophysical Perspective

selected based on broad resource capabilities, uses, and potential impacts. The job of the multidisciplinary team is to select one or more of these corridors for detailed evaluation of routes on the basis of the best balance between biophysical, socio-economic, and engineering components.

Phase 2 is carried out in greater detail to select one or more possible routes within the preferred regional study corridor selected in phase 1. (Alberta Energy and Natural Resources: 1980)

The preceding sections have generally discussed the now standard components of the route selection process. The following chapters will deal with the socio-economic component and more specifically the regional interest factor.

Starting with the federal process, that process will be compared to those of the Provinces of British Columbia, Alberta and Ontario. In comparing the federal/provincial legislative processes, the following topics will be discussed, namely; agencies and legislation, project certification, detailed routing, land acquisition, expropriation, and compensation.

PART III

CHAPTER 3

THE FEDERAL PROCESS

3.1 The National Energy Board

Under the National Energy Board Act of 1959 and subsequent amendments, the NEB has two principal responsibilities:

- (i) to regulate specific areas of the oil, gas and electrical utility industries in the public interest, and
- (ii) to advise the Government on the development and use of energy resources.

The Board is empowered to grant certificates to construct and operate interprovincial and international oil, gas and products pipelines, and international and designated* interprovincial electric power lines. Before

* The Governor in Council may by order designate any facility that is to be constructed and operated for the purpose of transmitting power from a place in a province to a place in Canada outside that province as a facility to which the provisions of the NEB Act for international power lines apply.

any certificate is issued, the Board is required to consider the application at a public hearing.

The Board may also issue orders approving minor additions or modifications to existing pipeline systems without calling a public hearing. Such additions and modifications are restricted to sections, branches, and extensions of pipelines not more than 40 kilometres in length. The Board may also, by order, authorize the construction and operation of international and designated interprovincial lines of voltage not exceeding 50 kV without a public hearing.

3.2 The NEB Route Approval Process

3.2.1 Prior to March 1983

Prior to 1 March 1983, the proclamation date of Bill C-60, the first step in the approval of a major energy project was to hold a public hearing to judge whether or not the project was in the public interest. That included public hearings at one or more locations depending on the nature and scope of the project. At those hearings, public interest groups, government departments, and other agencies were encouraged to voice their particular concerns or expert knowledge respecting the proposed project. Those

points raised were taken into consideration in forming the Board's ultimate decision.

In cases in which projects were judged to be required and to be in the public interest, the NEB, on approval by the Governor in Council, would issue a Certificate of Public Convenience and Necessity. That certificate not only approved the project in principle but it included the approval of the general route. No further public input or hearings were held on the final route.

Subsequent to the issuance of a certificate, the company had to define more precisely the route through further surveying for preparation of their plans, profiles and books of reference. Those plans, profiles and books of reference had to be submitted to the NEB for review and approval by an order. In some instances, it was during the preparation of those plans that many landowners got their first firm notification of the project's scope and its direct impact upon them.

The approval of the plan, profile, and book of reference, or detailed final route, was strictly an administrative procedure with no requirement for input from affected landowners. Property owners did not have a forum to present their objections to the route as no public

hearings were required for the first 60 feet width of right-of-way. For land acquisition, the Board was only required to hold public hearings where a company could not successfully acquire lands in addition to the first 60 feet. Those hearings, for the additional lands, could not deal with matters relating to the location of the route, the initial 60 feet of right-of-way, or any form of compensation. Only the matter of the need for a wider right-of-way would be considered.

Following the above-noted hearings, should the company still not have acquired the necessary lands by negotiation, expropriation would be required. The acquisition of land would then be governed by the provisions of the Railway Act, a statute which had not been significantly amended since 1919.

Under the Railway Act, expropriation would be effected by the company filing copies of the approved plan, profile, and book of reference with the appropriate Land Registry or Land Titles Office. Application would then be made to the District or County Court to obtain a warrant of immediate possession utilizing the plan, profile, and book of reference as prima facie evidence in the expropriation case which was an interim proceeding in the expropriation process. Notice of such application would then be served

on the owner. Upon having received a warrant of immediate possession, the company would have the right to enter on to the property under dispute in accordance with the conditions as set out by law.

It was the responsibility of the company to negotiate compensation with the landowners. In the event that an agreement could not be reached, the NEB had no power to intervene and a judgement from the local County Court would be required to settle those cases.

It is apparent from the above that the National Energy Board, prior to 1 March 1983:

- (i) had no power to control the terms of agreement set out in the right-of-way or easement document prepared by a company;
- (ii) could not control expropriation procedures; and
- (iii) could not set the amount of damage compensation resulting from project construction.

It is further apparent that prior to 1 March 1983, landowners:

- (i) did not have a fair opportunity to discuss the routing of pipelines; and
- (ii) were not protected by the NEB in the case of expropriation and/or compensation matters.

3.2.2 Background to Amendments of 1983

On October 12, 1978, the Senate of Canada agreed to the creation of a special committee which was empowered "to inquire into matters relating to the planning and construction of the Northern Gas Pipeline and amend certain acts in relation thereto" (Dunsmore, 1982: 67). The Senate Committee had particular interest in exploring the rights of landowners in relation to pipeline projects.

Senators Olson and Hayes were leaders in the Committee's efforts to have the National Energy Board Act revised. Senator Olson gave the first reading of Bill S-12 on the 14th of February, 1979, and a second reading took place on the 22nd of February, 1979. During this time, the Senate Committee held hearings and received submissions from industry and several interested parties on the matter of revising the Act. The Committee presented its report on the 8th of March, 1979 and, following a third reading on the 14th of March, Bill S-12 was passed by the Senate on the 16th of March, 1979.

As a result of a May 22nd election call, all bills which had been introduced and which had not received Royal Assent in that session of Parliament, died on the Order Paper. Bill S-12 was one such bill.

Following the election of a Conservative government, followed by a Liberal re-election in 1979, Bill S-12 was re-introduced as a House of Commons bill on the 10th of February, 1981. The Honourable Marc Lalonde read the bill, now Bill C-60, for the first time before the House on that date. The second and third readings of Bill C-60, in a considerably improved form, took place on the 6th of March, 1981, with the subsequent passing of the Bill, again to the Senate.

The first reading of Bill C-60 before the Senate occurred on the 10th of March, 1981. Following a second reading on the 17th of March, 1981, Bill C-60 was once again referred to a special Senate Committee. At this stage, comments were again solicited and submissions were received from several companies, the Canadian Petroleum Association, and the Canadian Farm Federation.

Following the review by the Senate Committee, Bill C-60 was read for the third time on the 7th of April, 1981. The bill was passed by the Senate and subsequently assented to on the 18th of December, 1981. Bill C-60 was finally proclaimed on the 1st day of March, 1983, and its requirements are discussed in the following section.

**3.2.3 Current NEB Procedures, Based on Bill C-60,
National Energy Board Act amended, (referred to in
the text as the Act) 1983**

A company seeking to build or extend an interprovincial or international gas, oil or products pipeline, or an international power line, must first obtain the National Energy Board's authorization for the line, including its route. That authorization is now granted by a two-stage process: the first stage is the "certification" of the project (Figure 3.1), the second is the determination of the "detailed route" (Figure 3.2).

3.2.3.1 First Stage - General Route Approval

In the first stage, the company applies for a Certificate of Public Convenience and Necessity. The purpose of the certificate hearing, among other things, is to select a general route for the line. The selection is based on the economics and engineering of the line, its safety, its environmental effects, and any socio-economic considerations.

The Board examines the application, and once it is satisfied that all necessary information has been provided, sets a date for a public hearing. A notice is published in

**Figure 3.1
National Energy Board
Certification Procedures
(First Stage)**

36a

Source: National Energy Board Document
W J Ostafichuk
(Unpublished)

Figure 3.2
National Energy Board
Detailed Route Procedures
(Second Stage)

36b

appropriate newspapers (those newspapers having national circulation as well as designated provincial newspapers) announcing the hearing and informing the public how to participate. Interested parties become entitled to receive, from the company, a copy of the application and any further material filed by the company, other intervenors, or the Board. At the hearing, participants may cross-examine the company's witnesses and present their own evidence and argument. Cross-examination is not limited to the company but could include other intervenors and NEB staff. No funding is provided to intervenors by the company or the NEB at this hearing.

The Certificate of Public Convenience and Necessity, if granted, is the general authorization for the project. It establishes a general route, but may not define the detailed route. The detailed route is fixed by the second stage of the overall procedure in which local landowner concerns must be examined.

3.2.3.2 Second Stage - Detailed Route Procedures

The second stage (see Figure 3.2) commences when the company files plans, profiles, and books of

reference* for the line. Under section 29 of the National Energy Board Act, a company receiving a certificate from the Board is required to prepare and file those documents to show the precise location of the line, to specify the lands to be crossed, and to identify the landowners as far as they can be ascertained.

Under the Act, as amended in 1983, the filing of plans, profiles and books of reference sets in motion a series of actions designed to involve landowners and other affected parties. First the company is required to serve a personal notice on all owners of land proposed to be acquired and to publish a notice in at least one issue of a publication, if any, which is circulated in the area. The notices describe the proposed detailed route and the procedure by which any interested person who opposes the route can present objections to the NEB.

* Plans, profiles, and books of reference (PPBoR) consist of three parts:

- (i) the plan which sets out the exact location of the facility (normally a photo mosaic with appropriate survey points;
- (ii) the profile which is a continuous plot of the elevations along the route; and
- (iii) the book of reference which sets out the name of the owners/tenants and the right-of-way requirements (length, width, acreage and land description).

A landowner served with the notice who wishes to oppose the route must, within 30 days of being served, file with the Secretary of the NEB a written statement explaining his interest and the grounds for his opposition. Likewise, any adjacent owners who consider that their lands may be adversely affected by the line may, within 30 days of the last publication of the notice, file a similar statement of objection.

If the NEB receives any statement opposing the route, it is required to hold a local (in the immediate vicinity of the objections) public hearing to hear representations from all interested persons. The local public hearing affords landowners and affected parties* an opportunity to take part in the determination of the final route.

The NEB has the authority to allow any reasonable costs incurred by a person in making representations at such a hearing, and such costs are then payable to that person by the company. To date the Board has yet to arbitrate a landowner's submission for costs.

* Any individual, interested party, lobby or advocacy group who feel that they have an interest in the project.

After the hearing, the NEB takes into account all written statements and all representations made at the hearing and then determines the best possible detailed route. The NEB then must forward a copy of its decision and reasons to the Federal Minister of Energy, Mines and Resources, and to each person who made a representation at the public hearing (NEB, 1983: 1)*. Any landowner or affected party can request a section 17** review of any order or decision made by the Board. Those parties also can appeal a decision or order of the Board to the Federal Court of Appeal on a question of law or jurisdiction.

3.2.3.3 Land Acquisition

Agreements

Relating to the acquisition of lands, section 74 of the Act now specifies requirements regarding the

* Sections 3.2.3, 3.2.3.1 and 3.2.3.2 have been extracted from NEB Information Bulletin No. 1, September 1983. That bulletin was drafted by the writer of this paper.

** Section 17 Reviews - Under Section 17 of the National Energy Board Act, the Board may review and alter any decision it has made. A party to a public hearing may apply for a review of the decision. Such reviews are the exception rather than the rule, and are available only if specific conditions set out in the Rules of Practice and Procedure are met. If the Board decides that a review is warranted, it may conduct it by holding another hearing or by calling for written submissions. (NEB, 1983: 3)

agreement between a company and a landowner. Presently under the Act, the land acquisition agreement must include certain provisions. Briefly, those provisions relate to:

- (i) compensation for the acquisition of lands;
- (ii) a review every 5 years of the amount of compensation;
- (iii) compensation for damages (during construction, operation or maintenance stages);
- (iv) indemnification from all liabilities, damages, claims etc.;
- (v) restricting the use of the lands; and
- (vi) additional matters.

A feature of the new land acquisition agreement, which is new to federal law, is the provision that an owner whose lands are to be acquired has an option to choose whether he will take a lump-sum payment in settlement of his claim, or whether he prefers to receive annual or other periodic payments in the nature of a land rental, including a right to a review of the amount of these payments every five years. The benefit of exercising the latter option is that the landowner can avoid the difficulty of having to anticipate and assign a value to all the sorts of damage that may occur over the operating life of the pipeline.

Another significant provision, which addresses a concern expressed by many landowners over the years (House

of Commons Debates, Canada, 1981: 8007), is that with each agreement a company may acquire the right to build only one pipeline. If a second pipeline is planned later over the same route, additional compensation must be paid at that time. All too often in the past, a landowner had found that a pipeline company wishing to build a second pipeline across his land was under no obligation to pay any further compensation in respect of land rights.

Notification

Probably the most important feature of the new land acquisition procedures is the assurance that landowners are informed of their rights. The first step to be taken by a company planning a pipeline or power line, once the company has determined the specific lands that may be required, is to serve a notice on every landowner whose land may be required. That notice (section 75.(1) of the Act) can be served at any time once a company has determined what lands it may require. The notice must advise the owner of:

- (i) a description of the lands the company wishes to acquire;
- (ii) the details of the compensation offered;
- (iii) a detailed statement of the value of lands required (as determined by the company);
- (iv) a description of the procedure for the detailed route examination; and

- (v) a description of the procedure under the Act available to the landowner to challenge the amount of compensation offered by the company.

That notice must be served before the company can enter into any land acquisition agreement. In this way, every landowner is fully informed of his rights before he enters into any binding contract.

3.2.4 Compensation (Negotiation and Arbitration)

Bill C-60 amended the Act substantially with regard to the rights of a landowner to be compensated for disturbances. It should be noted that it is not only the owners of the required lands who may receive compensation. The Act now provides that all landowners whose lands are adversely affected (the onus is on the landowner to demonstrate the need for compensation) by the presence of the pipeline or powerline are also entitled to compensation. In addition, once the project is built, landowners will be entitled to the recovery of damages suffered as a result of the ongoing operation or maintenance of the pipeline or powerline.

The Act, under section 75.19, codifies the items to be considered in assessing the level of compensation.

Those items include:

- (i) the market value of the land taken;
- (ii) changes in the market value;
- (iii) loss of use of the land;
- (iv) the adverse effects of the pipeline on the remaining lands of an owner;
- (v) any nuisance or inconvenience to the owner that may result from the pipeline;
- (vi) damage to lands in the area of the lands taken by the company;
- (vii) loss or damage to livestock or any other personal property of the owner;
- (viii) any special difficulty incurred by the owner in relocating himself or his property; and
- (ix) such other factors as the arbitration committee considers proper.

Negotiation

The procedure for determining the amount of compensation is as follows. Once the NEB has approved the company's detailed route in the manner previously described, the company and the landowner continue to negotiate a settlement, if a settlement has not been reached. Should the parties be unable to reach an agreement, either party may apply to the Federal Minister of Energy, Mines and Resources for the appointment of a negotiator to assist in the settlement of the disagreement. Within sixty (60) days of the start of his

work, the negotiator must report to the Minister his success or failure. It should be noted that negotiations are not binding.

Arbitration

If the negotiator is unsuccessful, or if either party wishes to dispense with negotiations, they may apply to the Minister to have the matter submitted to an Arbitration Committee for binding determination. An Arbitration Committee would be appointed by the Minister and would have a minimum of three members. The members should have some expertise in the assessment of land values and, preferably, would come from the local area. Initially at least, Arbitration Committees are appointed on an *ad hoc* basis as claims arise, but the legislation does provide for the establishment of one or more permanent Arbitration Committees should the amount of work warrant it.

With the receipt of a request for arbitration, the matter would be referred to an Arbitration Committee which would then be required to hold a hearing to receive evidence on the question of compensation payable. The Committee would assess the amount of compensation in accordance with the criteria set out earlier, and would have the power to award interest at the prime rate on the amount paid.

Any award made by the Committee can be registered in the Federal Court and enforced by an order of that court. Any appeals to the Federal Court (Trial Division) can lie only on a question of law or jurisdiction. It is also provided that in the event that a landowner and the company enter into an agreement after the Arbitration Committee has made its award, the agreement supersedes the award and governs the relations between the parties.

3.2.5 Expropriation (Right of Entry)

In the past, as indicated earlier, when negotiation efforts between a proponent and landowner were not successful, lands for the right-of-way were expropriated under the federal Railway Act.

Under the current legislation, after the plans, profiles and books of reference have been approved (which could involve a public hearing) and only when the company was unable to conclude an agreement with the landowner, the company could apply in writing to the NEB for what is now referred to as a right of entry.

To receive the right of entry, a company must have served on the landowner a notice of its intention to apply

to the Board. That notice must be served between 60 days and 30 days prior to the company making its application, and must indicate:

- (i) the date the proponent intends to make its application to the Board;
- (ii) the date the proponent wishes to enter the lands;
- (iii) the address of the Board to which the owner may send any objection; and
- (iv) a description of the right of the owner to advance compensation pending the outcome of further negotiations.

After evaluating the landowner's concerns, the NEB may issue an order allowing the proponent to enter and construct upon the land it requires. To protect the landowner, the NEB may impose terms and conditions on the right of entry, limiting the scope of construction activities.

When a company receives such a right of entry, the landowner becomes entitled to an advance payment of compensation. That advance payment would be payable to him and any disagreement as to the amount of the payment could then be submitted to arbitration. Any award made by the arbitration committee can be registered in the Federal Court and enforced by an order of that court. Any appeals to the Federal Court (Trial Division) must lie on a question of law or jurisdiction.

This completes the review of the federal process as regulated by the National Energy Board. In their process, the Board regulates both pipelines and hydro transmission power lines under one Act. The federal process, as we have seen, also utilizes a two-stage route approval process. A more formal comparison of the Board's procedures and those of the three selected provinces will be undertaken in Chapter 8. We will now turn to the legislated processes of the Provinces of British Columbia, Alberta and Ontario.

In the Province of British Columbia, major transmission development approval is administered by the Utilities Commission, through the Utilities Commission Act. Approval of major energy projects in British Columbia is accomplished through a single stage process which may not require public hearings.

Approval of energy projects in Alberta somewhat parallels the approval process of the NEB. Here the Energy Resources Conservation Board is the single approving agency for the project. The Board, however, employs several pieces of legislation in carrying out its approval function. It will also be seen that one further agency becomes involved if expropriation of land rights are required. That agency is the Alberta Surface Rights Board.

The agencies and legislation governing transmission corridor development in Ontario are complex in comparison to those of British Columbia and Alberta. Here separate agencies and several pieces of legislation are in place for both pipelines and powerlines.

PART IV

CHAPTER 4

THE PROVINCIAL PROCESS

BRITISH COLUMBIA

4.1 Overview

Within the Province of British Columbia, energy projects are approved pursuant to two statutes: the British Columbia Utilities Commission Act (UC Act), and the British Columbia Transport and Highways Act. The former statute governs major energy corridor projects for electricity in excess of 500 kv, and for pipelines transporting more the 16 petajoules(PJ) of oil or gas (2.57×10^4 barrels or 14.9×10^9 cu. ft). The latter statute governs the minor project approvals which are not the subject of this paper (Province of British Columbia, Letter, 4 September 1986: 1-2).

Major energy corridor approvals in the Province, with respect to public involvement in route selection, are discretionary to the Minister. In reaching his determination of a need for public review, held by the Public Utility Commission, the Minister relies on a

pre-application review process set by policy. That review is conducted by an Energy Project Coordinating Committee (EPCC) which guides the development of an application, including necessary studies and background information, from a prospectus, through a pre-application stage, to formal application.

By the formal application stage, the Minister has before him all the major details of the project, from economic viability to route requirements, and has had brought before him any significant government agency or public concerns. With that information, the Minister may approve or refuse an application or require a public hearing by the Utilities Commission; this Commission provides recommendations on the issues before it concerning approval.

Not readily visible in the legislation is the emphasis placed on public consultation and discussion. The literature (British Columbia, Guide to the Energy Project Review Process, 1982: 11-12) indicates that a proponent should be initiating full public disclosure of a project at the prospectus stage. The effectiveness of that procedure (non-statutory) can only be assessed through specific project analysis, an analysis beyond the scope of this paper.

Land acquisition procedures are limited to negotiation or expropriation. No specific negotiation or arbitration procedures are established. The onus for acquiring a specific route rests with the proponent. For an owner of lands, the opportunity for influencing the location of a specific route is limited by a government determination of need. No procedure for determining the detailed route is fixed. Adjacent owners have limited, if any, recourse to final route selection and no recourse to receive compensation for damages caused by the construction operation or maintenance of the facility.

4.2 Agencies and Legislation

The UC Act provides for the regulation of public utilities, including the British Columbia Hydro and Power Authority, the review and certification of projects which generate, use, store, transport, transship, or transmit large quantities of energy, and, the review and certification for the removal of energy resources from British Columbia. Projects, deemed to be 'regulated projects' are defined by the following criteria.

For electric projects

- a hydro or thermal power plant, or an addition to a plant, of 20 MW or higher.
- transmission lines of 500 kV or higher voltage.

For pipelines and ancillary facilities

- facilities capable of transporting 16 PJ energy per year (equivalent to 2,570,000 barrels of crude oil or 14.9 billion cubic feet of natural gas).
- facilities capable of storing 3 PJ of energy (equivalent to 482,000 barrels of crude oil or 2.8 billion cubic feet of natural gas).

For other projects

- any new project capable of using 3 PJ of energy per year, or the addition of 3 PJ to an existing project (equivalent to 95 MW continuous electrical supply).
- an undertaking of any kind that the Lieutenant Governor in Council (Cabinet) designates to be significant in the matter of energy. (British Columbia, Guide to the Energy Project Review Process, 1982: 5-6)

Each of the above-noted projects must obtain, prior to construction, an Energy Project Certificate and, prior to operation, an Energy Operation Certificate.

Although not part of this paper, approvals for gas and oil projects that fall outside of the purview of the UC Act would fall under the responsibility of the British Columbia Ministry of Transportation and Highways. In that situation, the Pipelines Act requires that a proponent who is not a public owned utility apply for a certificate to build a pipeline. An inter-ministerial referral process, to review those applications, is in place (Province of British Columbia, Letter, 13 August 1986: 1).

The procedure for obtaining an Energy Project Certificate, the subject of this paper, is dictated by section 18 of the UC Act, which requires that an application be made to the Minister of Energy, Mines and Petroleum Resources (Minister). Once an application has been made, there are three alternative review procedures specified by section 19 of the UC Act. Those are:

- (1) the Minister of Energy, Mines and Petroleum Resources, with the concurrence of the Minister of Environment, may refer the application for review by the Utilities Commission, with the ultimate decision being made by the Cabinet (section 19(1)(a));
- (2) the Minister of Energy, Mines and Petroleum Resources may order that an application made by a public utility be dealt with by the Commission as an application for a Certificate of Public Convenience and Necessity (section 19(1)(b)); or
- (3) the Minister of Energy, Mines and Petroleum Resources, with the concurrence of the Minister of Environment, may exempt the regulated project from the provisions of the Act (section 19 (1)(c)).

Section 19(1)(d) allows the Commission to reject outright the application. Figure 4.1 outlines the procedures for the three approval process alternatives.

The Utility Commission, referenced in steps 1 and 2, is established pursuant to section 2 of the UC Act which, in part, states:

Figure 4.1

54a

Certification Procedures (British Columbia)

Source:

Province of British Columbia: Ministry of Energy, Mines and Petroleum Resources

be advised at the earliest opportunity whether their project is regulated under Part 2 of the Act, or whether other guideline review procedures would apply to the project. Should the procedures of Part 2 be invoked, then the Applicant normally proceeds to the formal application stage in a two stage process: the prospectus and the preliminary planning report.

4.3.1 Prospectus

The prospectus will include a concise resume of the project description, project rationale, and proposed preliminary studies. The project description would provide a summary of project planning to date. This would include a description of proposed facilities related to the project, tentative locations under consideration, manpower estimates, and approximate schedules for project planning, approval and construction. The project rationale would outline the purpose of the project, the general implications for energy supply and demand, and the benefits to the Province of the proposed project. The proposed preliminary studies would indicate the studies and public consultation necessary to the undertaking.

Figure 4.2

Inter-Agency Framework (British Columbia)

*Currently Chair working committee

Source:

 Province of British Columbia Ministry of Energy
 Mines and Petroleum Resources

- (ii) the Director of the Assessment Branch, Ministry of Environment; and
- (iii) a staff representative of the B.C. Utilities Commission.

Also noted from the Figure 4.2 are the three working committees which have been established to assist the EPCC. Those include:

- (i) Environment/Resource/Land Use;
- (ii) Social/Economic; and
- (iii) Energy/Economics/Finance.

Figure 4.2 also identifies the Working Committees' broad areas of interest, their functions, and agency composition. The members normally represent agencies whose responsibilities may be affected by a regulated energy project.

4.3 Application Process

The general stages in the application process are outlined in Figure 4.3. Dependent upon the project characteristics, some stages may be omitted or combined with other stages. The B.C. procedure for preliminary review, guided by the EPCC, ensures that proponents would

Energy Project Application Process (British Columbia)

PRE-APPLICATION PHASE

PROSPECTUS

- (1) General project description and schedule
- (2) Project rationale
- (3) Description of proposed preliminary studies

Review by Energy Project Coordinating Committee and Working Committees,
consultation with proponent

PRELIMINARY PLANNING REPORT

- (1) Identification and assessment of feasible alternative locations
- (2) Analysis of alternative locations and identification of preferences
- (3) Preliminary Procurement Plan
- (4) Terms of reference for proposed environmental socio-economic impact studies
- (5) Terms of reference for proposed project justification studies
- (6) Description of public consultation program
- (7) Preliminary list of approvals, licences, and permits required

Review by Energy Project Coordinating Committee and Working Committees,
consultation with proponent in developing Application

APPLICATION PHASE

APPLICATION

- (1) Description of applicant as per Regulation
- (2) Project description
 - (a) purpose, costs, and ancillary facilities
 - (b) timetable for construction, operation, abandonment, reclamation, with critical dates
 - (c) public works, undertakings, or infrastructure entailed with costs and schedule
- (3) Environmental and socio-economic impact assessment and proposals for minimizing negative impacts and maximizing positive impacts
- (4) Project justification: energy supply demand, technical feasibility, financial feasibility, procurement, benefit-cost data
- (5) Ancillary applications, approvals, permits, licences required under *Pollution Control Act*, *Water Act*, and other pertinent statutes
- (6) Public consultation program description and summary of response
- (7) Other information as required

Review by Energy Project Coordinating Committee and Working Committees,
consultation with applicant as necessary

APPLICATION DISPOSITION BY MINISTER(S)

[Section 19(1) of *Utilities Commission Act*]

Source:

Province of British Columbia: Ministry of Energy,
Mines and Petroleum Resources

be advised at the earliest opportunity whether their project is regulated under Part 2 of the Act, or whether other guideline review procedures would apply to the project. Should the procedures of Part 2 be invoked, then the Applicant normally proceeds to the formal application stage in a two stage process: the prospectus and the preliminary planning report.

4.3.1 Prospectus

The prospectus will include a concise resume of the project description, project rationale, and proposed preliminary studies. The project description would provide a summary of project planning to date. This would include a description of proposed facilities related to the project, tentative locations under consideration, manpower estimates, and approximate schedules for project planning, approval and construction. The project rationale would outline the purpose of the project, the general implications for energy supply and demand, and the benefits to the Province of the proposed project. The proposed preliminary studies would indicate the studies and public consultation necessary to the undertaking.

4.3.2 Preliminary Planning Report

The purpose of the preliminary planning report is to provide:

- (i) a preliminary Environmental and Socio-Economic Assessment of alternative locations for the project, including a general assessment of impacts associated with the preferred location(s);
- (ii) a preliminary Procurement Plan, including British Columbia/Canadian procurement opportunities;
- (iii) a detailed Terms of Reference for project justification and environmental and socio-economic impact assessment studies required by the Regulations;
- (iv) a description of Public Consultation Program, underway and/or proposed; and
- (v) a preliminary list of Approvals, Licences and Permits required under provincial laws. (British Columbia, Guide to the Energy Project Review Process, 1982: 11-12)

The preliminary environmental and socio-economic impact assessment would identify and compare the alternative areas and/or corridors under consideration for the project and would select the preferred location(s). The assessment would undertake an assessment of the preferred alternative(s) and outline proposals for detailed study of one or more of those alternatives.

That assessment would clearly set out the criteria and methodology employed in the evaluation of

alternatives. It would list and assess the general impacts associated with those broad location options. The information in this preliminary assessment should be sufficient to make a comparative judgement of alternative development locations.

The preliminary procurement plan would include a general indication of goods and services associated with the project, and procurement opportunities for British Columbia and Canadian suppliers.

The terms of reference for studies would reflect the requirements of project justification, and environmental and socio-economic impact assessment. In particular, the major assumptions and methods to be employed in those studies would be clearly identified and discussed with the various working committees. Review of those terms of reference would ensure that relevant studies meet the requirements of provincial government agencies and avoid subsequent rejection.

The public consultation program would be described in detail, including the proposed methods, timing, and forms of public notification. It is expected that proponents would make information available to the public during the project planning stages. Once the feasible

alternative(s) and the major impacts have been generally evaluated, the proponent would initiate meetings or workshops with local government authorities, local interest groups, and the general public prior to preparation of an application.

The preliminary list of approvals, licences, and permits is required to provide government agencies with advance notice of approvals sought under other provincial statutes and to assist the project review process (British Columbia, Guide to the Energy Project Review Process, 1982: 12).

4.3.3 Application Phase

B.C. Regulation 388/80 outlines the general content of an application for an Energy Project Certificate. The review of the application by the EPCC and the working committee ensures that the broad requirements of the Regulation are satisfactorily addressed.

The application would include a full description of the project, its purpose, capital and operating costs over time, its timetable, and the related aspects of ancillary facilities and new infrastructure. The project description would also indicate the requirements for acquisition of private and Crown land.

The environmental and socio-economic impact assessment report would summarize the site/route selection, and provide a detailed description of the impacts and the proposals for mitigation and/or compensation. The report would:

- (i) identify and assess the major environmental and socio-economic impacts associated with each alternative site or route and undertake a comparison and selection of a preferred alternative on the basis of technical engineering, environmental, socio-economic and cost criteria (contained in preliminary planning report);
- (ii) identify and assess in detail the environmental, social and economic impacts associated with the preferred location(s) and present the proposals for reducing negative impacts and obtaining the maximum benefits from positive impacts;
- (iii) outline the plans and procedures for site specific impact mitigation and/or compensation and their implementation;
- (iv) outline the plans and procedures for field inspection and monitoring programs to ensure compliance and management of impacts; and
- (v) outline the plans and procedures for clean-up, revegetation, reclamation and abandonment of the project or ancillary facilities, as applicable (British Columbia, Guide to the Energy Project Review Process, 1982: 13).

Studies on project justification would be guided by the terms of reference prepared in consultation with the Energy/ Economics/Finance Working Committee. The purpose of this assessment is to provide the EPCC with sufficient information on the economic and financial viability of the

project, the overall benefits and costs to the Province, and the potential effects upon energy resources and energy use. In general, and subject to consultation with the Working Committee, project justification should address:

- (i) energy supply and demand forecasts;
- (ii) technical feasibility related to project justification;
- (iii) financial feasibility on financial arrangements and evidence of commercial viability;
- (iv) procurement plan of B.C./Canada content goals; and
- (v) economic data on all project benefits and costs and their distribution, including non-quantifiable benefits and costs (British Columbia, Guide to the Energy Project Review Process, 1982: 13).

An application would contain a list of approvals, permits or licences required under the Pollution Control Act and all other federal, provincial, and municipal statutes. It is the responsibility of each applicant to ensure compliance with all federal, provincial, and municipal enactments.

An application would contain a description of the applicant's public information and consultation program. This would include a report on public notices, meetings and workshops, and other public consultation. It also would contain a summary of information dissemination, public

response, major issues and concerns, and potential resolution of such issues and concerns.

An applicant may wish to submit certain information supporting an application with the request that it be treated confidentially. Such information would be delivered under separate cover together with an explanation of reasons for the request and the period during which confidentiality should ensue.

If the Minister declines to accept the request for confidentiality, the information and all copies thereof would be returned to the applicant.

4.3.4 Route Approval

Having undertaken the pre-planning requirements, an applicant would have formulated a complete application which would, where required, comply with the B.C. Regulation 388/80. That regulation dictates that an application contain:

- (i) description of applicant, evidence of financial and technical capacity for undertaking the project, identification of applicant's representatives;
- (ii) description of the project and anticipated timetable;

- (iii) description of any new or expanded infrastructure made necessary by the project;
- (iv) identification and preliminary assessment of any impacts by the project on the physical, biological, and social environments, and proposals for reducing negative impacts and obtaining the maximum benefits from positive impacts;
- (v) project justification, including technical, economic and financial feasibility studies and a benefit/cost study;
- (vi) list of approvals, permits or licences under the Pollution Control Act and Water Act and whether they are being sought as part of the application;
- (vii) list of approvals, permits or licences required under federal, provincial, and municipal jurisdictions;
- (viii) description of the applicant's public information and consultation program; and
- (ix) other information as required by the Minister, including supplementary information required to clarify the application (British Columbia, Guide to the Energy Project Review Process, 1982: 6).

In meeting those requirements, under the guidance of the EPCC, a proponent has established a route configuration which is satisfactory to the Province. It remains only for the application to be dealt with by the Minister who determines how the application should be approved. In this regard, and in light of advisement on potential public objections by the EPCC, the Minister can select one of the methods set out by section 19, previously presented. Each of those methods is described below in more detail.

2

Microl

Review by Commission and Decision by Cabinet (section 19(1)(a))

On receipt of an application for an Energy Project Certificate, the Minister of Energy, Mines and Petroleum Resources, with the concurrence of the Minister of Environment may refer the application to the Commission for review, according to terms of reference specified by the Ministers. Depending on the project, the terms of reference may include the requirement that the Commission recommend whether or not a Pollution Control Permit and/or Water Licence be issued.

The Commission must then conduct a public hearing on the application, according to its own procedures. The Commission's report and recommendations are then submitted to the Cabinet, who may order that an Energy Project Certificate be granted, with terms and conditions, or that the application be denied. Cabinet may also order that a Pollution Control Permit and/or Water Licence be issued, and specify the necessary terms and conditions.

If an Energy Project Certificate is granted, the applicant proceeds with construction. Upon completion of construction and before commencing operations, the applicant must demonstrate to the Cabinet compliance with the Energy Project Certificate's terms and conditions. If

compliance is shown, an Energy Operation Certificate would be issued. This Certificate may specify further conditions.

Review and Decision by Commission (section 19 (1)(b))

If a public utility applies for an Energy Project Certificate, the Minister may refer the application for a review under Part 3 of the UC Act. Under Part 3, any public utility operating in the province must obtain a Certificate of Public Convenience and Necessity from the Commission. The Commission, at its discretion, may hold a public hearing on the application.

If the application is approved, the Commission would issue a Certificate of Public Convenience and Necessity, with terms and conditions as required. Conditions could include matters related to such items as construction, maintenance, rates, and service. As with Part 2, applicable statutory requirements and authorized procedures must be satisfied by the application.

Exemption (section 19(1)(c))

The Minister with the concurrence of the Minister of Environment, may order that the construction and operation of a project be exempt from some or all of the

provisions of the UC Act specified in the order. The Minister's order may include any conditions that could be included in an Energy Project Certificate or an Energy Operation Certificate. In addition, other applicable statutory requirements and authorized procedures must be satisfied by the applicant.

4.3.5 Notification and Hearing

As discussed, a public hearing is required pursuant to section 19(1)(a) and may be required pursuant to section 19(1)(b) of the UC Act when it has been determined by the Minister that the application should be reviewed by the Utilities Commission. The Minister, in conjunction with the Minister of Environment, co-author the Terms of Reference for the hearing. That situation has arisen twice in the past several years, first dealing with the Site "C" Hydro Project in 1981 and second, dealing with the Vancouver Island Gas Pipeline Project in 1983. It is from those documents and the Regulations established for those hearings that the following overview has been drawn.

While both Terms of Reference are quite comprehensive in scope, that comprehensiveness leads the author to believe that the Utilities Commission review can be as restricted as the Minister may require. Therefore,

a project which may involve questions relating to actual need, as well as public discussion concerning ancillary facilities, could be restricted solely to the question of facilities, if the Government (Minister) so decides.

Concerning notices to affected individuals, the Terms of Reference do not prescribe required methods or timing of notices. A review of sections 83 and 84, dealing with Gas Pooling, indicate that it would be the responsibility of the Commission to determine persons affected by a project and to provide each of them with notices. However, that requirement is not stated specifically under Part 7 of the UC Act, Commission Inquiries.

It would be anticipated that, as the Terms of Reference and the Act do not stipulate notification requirements, the Commission's regulations drafted for those Terms of Reference would outline those procedures. This is not the situation however. A review of B.C. Regulation 172/83 - Supply of Natural Gas Service on Vancouver Island does not specify any notification requirements.

4.4 Land Acquisition and Expropriation

Within British Columbia, the power of a proponent undertaking an energy project to acquire lands is embodied in two statutes. For hydro related projects, the British Columbia Hydro and Power Authority Act (B.C. HPA Act) allows the Authority, pursuant to section 12(1)(e), to:

"acquire, maintain, develop, replace, alter, administer, manage, operate and dispose of property;".

For oil and gas projects, the Pipeline Act allows a proponent, pursuant to section 7(b), to:

"purchase, take and hold of and from any person any land or other property necessary to construct, maintain and operate its line, and dispose of any of its property that has become unnecessary for the purpose of the line;".

In all cases that authorization stems from the approval of the Lieutenant Governor-in-Council through the approval of a Certificate of Public Convenience and Necessity.

With one exception, no restrictions or requirements are placed on the securement of lands by a proponent through mutual agreement with the affected landowner. In fact, as previously discussed, the proponent

may not have commenced its public notification and participation program, required by the certificate, prior to negotiating land rights. The only instance where specific provisions do exist is with expropriation. In that instance procedures are set out in the enabling legislation.

The exception mentioned above is found in Section 45 of the Railway Act. While mutual agreements may be reached prior to certification, a pipeline company must re-negotiate land rights where those rights were negotiated one year or more prior to construction (this is not the case if the lands have been registered under the Land Title Act) and the parcel of land on which the right-of-way was located was sold.

4.4.1 Private Lands

4.4.1.1 Hydro Transmission Lines

Expropriation proceedings under the B.C. HPA Act are straightforward. Where the expropriation is authorized by the Lieutenant Governor-in-Council, the Authority must prepare a plan and description of the required lands in duplicate. Those documents must be certified by a B.C. land surveyor and signed by the chairman and secretary of

the Authority. When registered in the office of the registrar of the Land Titles district in which the land is situated, the title to the land is then vested in the Authority and is registered in the name of the Authority. Not including previous negotiations, the sole involvement of an affected landowner comes with the settlement of the amount of compensation for the expropriated lands.

The determination of compensation arising from an expropriation is detailed in section 22 through 41 of the B.C. HPA Act. From the execution of the expropriation, the Lieutenant Governor-in-Council may allocate a time period during which the proponent and the affected landowner can seek to reach agreement. If that period elapses, or if it is expedient in the public interest, the Lieutenant Governor-in-Council may appoint a valuator, or a Board of three valuers, to determine the compensation. Following appointment and subsequent examination, the valuator, having determined a value for the lands, must advise the owner and authority by registered mail.

In the event that either party is not satisfied with the amount fixed by the valuator, an appeal may be made to the Lieutenant Governor-in-Council within 30 days of receipt of the valuator's judgement. Service of the appeal also must be made to the other party who is allowed 10 days

in which to respond. The Lieutenant Governor in Council must refer the appeal to the County Court which, if requested by either party, may hold a hearing. Failing acceptance of the County Court's decision, further appeal is available to the Court of Appeal.

It is evident from the preceding that an affected owner has little or no opportunity to participate in the detailed location of the route other than following the issuance of a certificate. Further, no provision is made for compensation for hearing participation. Similarly, affected adjacent parties have minimal opportunity in effecting a route modification and no opportunity to receive compensation for damages other than those resulting from construction or maintenance.

4.4.1.2 Pipelines

For proponents of energy projects which are administered under the Pipeline Act (oil and gas pipelines), the procedure for land determination and acquisition are not significantly different from those procedures administered by the National Energy Board prior to March 1983. The proponent is required to obtain a Certificate of Public Convenience and Necessity under the UC Act, for large projects, and subsequently, to obtain

approval of its plans, profiles and books of reference for the route. Following certification, the proponent may commence acquisition of the necessary land rights, through negotiations and mutual agreement. Expropriation procedures cannot commence until the plans, profiles and books of reference have been approved. The latter procedure initiates section 16(3) of the Pipeline Act which states:

"16(3) Sections 34 to 76 of the Railway act, in so far as they are reasonably applicable and not inconsistent with the Act, apply to pipelines and necessary works and undertakings connected with them.",

and which details the expropriation procedure.

Prior to detailing the expropriation procedures of the provincial Railway Act, it is illuminating to distinguish those land rights which reasonably may be exercised by the proponent. First, under section 20(1)(a) of the Pipeline Act, the proponent has an absolute right to take an 18 metre right-of-way. Any lands required beyond that right-of-way, to facilitate the construction, maintenance and operation of the pipeline, require approval of the Minister. However, that approval can extend up to 90 metres (section 24(3) Railway Act) from the centreline of the pipeline, to facilitate a deviation, change or

alteration, without requiring the filing of a new plan, profile and book of reference. Second, under the provisions of the provincial Railway Act, a proponent appears to have the right to occupy lands within 183 metres from the centreline of the pipeline to facilitate construction, repair or to accommodate Ministerial directions (section 36). In addition, pursuant to section 37, the proponent has the right to take lands on which stone, gravel, earth, sand, water or other material are located and to access that material without the consent of the owner subject to a surveyor's plan being prepared and being served on the owner and approved by the Minister.

The registration of the plan, profile and book of reference in the appropriate Land Titles Office initiates the expropriation procedure. That registration is deemed to be general notice of the lands required by the proponent. In addition, personal service is required to be made on each individual owner of land affected by the proponent's land requirements. Where the owner is absent or unknown, notice by publication may be substituted. The notice to be served or published must describe the land required, the powers to be exercised by the company, and a declaration by the proponent to pay a certain amount for the land and incurred damages. In addition to the notice, a proponent must provide an affidavit of a B.C. Land

Surveyor attesting to the land requirement, knowledge of the land and damages that may be incurred, and the fairness of the compensation offered.

Within 10 days of receipt of personal notice or one month from the last publication of notice, where the compensation offered has not been accepted, either party may apply to the court for arbitration. Either party must give 6 days notice of its application for arbitration to the other party. That application allows the court to appoint an arbitrator or, on application by the parties, three arbitrators to determine the compensation payable.

Within a specified time, the arbitrator must render a decision. In so doing, the arbitrator has the power to inspect the lands, require the production of books or documents, and summon witnesses and administer oaths. The award determined by the single arbitrator, or by majority of 2 of 3 of the arbitrators, must be forwarded by registered mail and is final if the award does not exceed six-hundred dollars. An award over six-hundred dollars may be appealed to the Court and subsequently to the Court of Appeal. The final award of compensation also allocates the cost of the arbitration proceedings. Where that award exceeds the amount previously offered by the company, it is borne by the company; where the award is less, it is borne by the landowner.

Where payment of the final compensation has been made to the owner, or to the court where the owner is absent, or where the proponent feels that it is advisable, the right to take possession of the land is automatic. In addition, the right to take possession may be issued by warrant, without compensation being paid, where it is demonstrated that the proponent is ready to proceed without delay.

As with the land acquisition procedures for transmission lines, it is apparent that directly affected and adjacent owners have no input into the detailed route selection. The filing of plans, profiles and books of reference does not require general publication, opportunity for objection to the route selected, or an opportunity to be heard by an administering body. The expropriation procedure is limited to the establishment of final compensation only.

4.4.2 Crown Lands

Thus far, discussion of land acquisition and expropriation procedures has centered on private lands and owners' rights. Within British Columbia, however, many energy projects affect crown lands which may have had certain other rights previously alienated to private

interests in those, or adjacent, crown lands. This paper would be remiss if mention was not afforded to the procedural requirements and implications of transmission corridors on those alienated rights.

Pursuant to section 53(1), the UC Act states that

"An Applicant for a certificate of public convenience and necessity shall file with the commission information, material, evidence and documents that the commission prescribes".

Those information requirements are reflected in the "Guide to the Energy Project Review Process" which prescribes, for a regulated energy project, that the proponent give a list of approvals, permits or licences required under federal, provincial and municipal jurisdictions". Those requirements also are set out under the B.C. HPA Act. Section 52(6) states:

"... the Forest Act, ... the Railway act, section 3 and 5, ... and the Water Act, section 1 to 23, 26, 28 to 45, 46, except paragraph (c), and 47 to 50, apply to the Authority."

From the preceding, then, it would appear that the treatment of energy projects is not significantly different from the treatment of any other private undertaking. A closer examination, however, reveals that this is not necessarily the case.

An applicant seeking to obtain a right-of-way through crown lands must apply to the Minister in a specified form accompanied by a plan of the proposed right-of-way. Unlike other land dispositions, where the land is unsurveyed, the applicant does not have to 'post' or furnish 'proof of posting' of his intention to apply for a disposition. That posting would serve to advise other parties, holding interests (grazing leases, registered traplines, etc.) in crown land, of the proposal.

Following posting, proponents of other types of projects would be required to publish a notice of intention to seek a disposition either in the British Columbia Gazette or in a local, district paper. Proof of publication would have to be provided in the application. For an applicant seeking a right-of-way, dispensation from publication or notice in the Gazette, or both, rests with the Minister. It is conceivable, therefore, that without a posting requirement or a publication requirement, no notice to other parties potentially affected by the right-of-way would be provided. While those provisions make the approval process consistent with the treatment of private lands affected by a project, it is evident that they also create a double standard detrimental to private interests.

In the event that a grant of right-of-way is secured, which affects another party, the only recourse available to that party is to seek compensation. For hydro or pipeline projects requiring a right-of-way, that compensation may not be forthcoming as section 47(1)(a)(i) of the Land Act reserves one-twentieth of any previous grant to accommodate, without compensation, 'other public works'.

Synopsis

Considerable detail has been expounded in this chapter. It may be helpful to restate some of the important points of the British Columbia approval procedure before reviewing the procedures utilized in the Province of Alberta. As a guide for further review, Table 8.1 compares the federal process to those of the three selected provinces.

In British Columbia, major transmission development approval is administered through the Utilities Commission Act by the British Columbia Utilities Commission and, ultimately, the Minister of Energy. With the issuance of an Energy Project Certificate, a Certificate of Public Convenience and Necessity or an Exemption Order, the transmission corridor route is determined.

Of particular note in British Columbia is the establishment of the Energy Project Coordinating Committee. The fact that a steering committee directs an applicant in the preparation of its proposal opens the question of provincial bias at the expense of the landowner. It should also be noted that project approval can be received without public notification. The only specific forum for a public hearing results with referral of an application by the Minister of Energy, Mines and Petroleum Resources to the Utilities Commission.

In British Columbia, no second stage route approval exists and, as has been described, no guarantee for landowner participation in the determination of the proposed route exists. A proponent holding a Certificate of Public Convenience and Necessity, if unsuccessful in negotiating a mutual agreement with a landowner, may proceed to expropriation procedures established under the B.C. HPA Act or the Pipelines Act (Railway Act). Under the B.C. HPA Act, the registration of a plan in the Land Titles office vests in the proponent the title to land.

CHAPTER 5

ALBERTA

5.1 Overview

Since 1938, the regulation of energy projects in Alberta has been the responsibility of the Alberta Energy Resources Conservation Board (ERCB). Drawing its powers from the Energy Resources Conservation Act (ERC Act), the Pipeline Act, and the Hydro and Electric Energy Act (HEE Act), that agency administers a 'one window' approach to the planning of energy projects. That approach is divided only when the applicant cannot acquire the necessary land rights for its transmission corridor, at which time the Alberta Surface Rights Board (SRB) becomes involved.

Energy corridor selection under the one-window approach has its main emphasis on three basic components: informal information presentation to affected municipalities and private owners (non-statutory); inter-governmental review (statutory); and, most importantly, private owner-applicant land acquisition negotiations (statutory). The information process is promoted by the ERCB to ensure full information presentation to the public concerning the development of the project. It also assists in the ERCB evaluation as it

is used to provide documentation of any meetings and voiced public concern.

The statutory inter-governmental review consists of circulation, by the ERCB, of any application to the Minister of Environment and the Minister of Energy and Natural Resources. Additional circulation to the Associate Minister of Public Lands and Wildlife and the Minister of Culture may be required in certain circumstances.

The subject matter and level of detail of information, for inter-governmental review, to be contained in the application rests with the applicant. Guidance on the level of detail can be obtained (it is recommended by the ERCB) at the preliminary planning stage. Supplemental Guides, Interim Directives and Interim Letters provide further guidance to the information requirements (Province of Alberta, Letter, 4 June 1986: 1-2).

As stated previously, the principal emphasis on route determination is the private owner-applicant land acquisition procedure. As the ERCB is charged with ensuring landowner natural justice, complete land acquisition is required. To facilitate that owner-applicant negotiation process, the Province has

established a 'Rite' telephone service* to advise owners of their rights, the process of negotiation, and other related processes which may be followed if negotiation is unsuccessful. As well, a Farmers' Advocate Office has been established which provides further oral and printed information. Similarly, for the applicant, information and advisory service is provided on methods of obtaining agreement without complicating the process with compensation issues. In this instance, letters of non-objection or letters of intent not to participate in a hearing, signed by the owner or occupant, are recommended. Those letters alleviate the Board's requirement to hold a hearing which prolongs the approval process.

5.2 Agencies and Legislation

Within the Province of Alberta, energy transmission corridor development approval rests, for the most part, with the ERCB. That Board, established under the ERC Act, receives its principal mandate from section 29 of the ERC Act which, in part, states that:

"29. (1) Unless it is otherwise expressly provided by this Act to the contrary, any order or direction that the Board is authorized to make may be made on its own motion or initiative, and without the giving of notice, and without holding a hearing.

* The 'Rite' telephone service is a free telephone information and advisory service available to all Albertans.

(2) Notwithstanding subsection (1), if it appears to the Board that its decision on an application may directly and adversely affect the rights of a person, the Board shall give the person

- (a) notice of the application,
- (b) a reasonable opportunity of learning the facts bearing on the application and presented to the Board by the applicant and other parties to the application,
- (c) a reasonable opportunity to furnish evidence relevant to the application or in contradiction or explanation of the facts or allegations in the application,
- (d) if the person will not have a fair opportunity to contradict or explain the facts or allegations in the application without cross-examination of the person presenting the application, an opportunity of cross-examination in the presence of the Board or its examiners, and
- (e) an adequate opportunity of making representations by way of argument to the Board or its examiners."

The instrumental portion of section 29(1) is '... any order or direction that the Board is authorized ...' as the Legislature of Alberta has assigned route approval for transmission facilities to the Board under the Pipeline Act and the HEE Act. The importance of section 29(2) is discussed later under section 5.3.3 Notification and Hearing.

Section 7(1) of Part 4, Permits and Licences, of the Pipeline Act states that:

"7. (1) No person shall construct a pipeline or any part of a pipeline or undertake any operations preparatory or incidental to the construction of a pipeline unless he is the holder of a permit or unless he is acting pursuant to a direction of the Board under section 34 authorizing him to do so."

Sections 12(1) and (2) of Part 2, Transmission Lines, of the HEE Act states that:

"12.(1) No person shall construct a transmission line or any part of a transmission line, or undertake any operations preparatory to the construction of a transmission line, unless he is the holder of a permit issued by the Board.

(2) No person shall make a significant extension or alteration of a transmission line unless the Board has amended his permit or issued a new permit to cover the extension or alteration."

The responsibilities under those provisions, however, are conditional. For instance, with the Pipeline Act, any application received by the Board must be referred, pursuant to section 8(1), to the Ministers of Environment and Energy and Natural Resources. Those Ministers may, pursuant to section 8(2), impose conditions which must be adopted by the ERCB if it approves the application. They also may direct that certain applications not be forwarded to them.

With the HEE Act, similar provisions to pipelines exist under section 13 of the Act. The exception is that, when crown land is affected, the Associate Minister of Public Lands and Wildlife also becomes involved. The Act takes the process further by requiring that the Executive Council of the Provincial Government review any Board approval and enact enabling legislation. That secondary approval process allows the Lieutenant Governor-in-Council to rescind any condition imposed by the Ministers.

To allow for the implementation of the Board's responsibilities under the two Acts assigned, the Board is empowered to make essentially whatever regulations it deems necessary pursuant to section 3 of the Pipeline Act and section 3 of the HEE Act. In so doing, the Board has developed basic information requirements to be followed by applicants in preparing submissions for corridor development. As well, it has issued a series of Guides, Interim Letters, and Interim Directives respecting information requirements to be provided by applicants for the efficient administration of an application. Of specific interest are the Guides' details for route selection, to be discussed later.

5.3 The Application Process

5.3.1 Initial Planning

Utilities in Alberta are charged with the initial responsibility for determining where and when components of their system should be developed in order to provide reliable service at a reasonable cost. This represents the first stage of the planning process. It is here that, thorough land resource data collection, design and preliminary route selection are done. This initial planning preparation, and the subsequent approval stages, are set out in Figure 5.1.

In the pre-planning preparation, the Board relies on its regulations and publications. For pipelines, the authority for making regulations extends from pre-application through construction to final operation and safety. The route selection provisions are itemized under Part 2, Pipeline Permit Applications sections 2 to 6 of the Pipeline Regulations. Those regulations, by themselves, require a company to provide only the technical detail of the proposed facilities with respect to other utilities, land requirements according to individual parcel and ownership, and acquisition agreement status (optioned and unoptioned).

Figure 5.1
Regulatory Process for Transmission Line Projects
(Alberta)

87a

Source: Alberta Power Limited
Internal Document

The technical detail is of note here. Generally, an applicant is required only to document the regional topography within a 400-metre wide corridor. No environmental detail is required. The exception to that comes with the Board's concern for 'sour' gas (greater than 0.16 moles of hydrogen sulphide) facilities. For those pipelines, the Board requires calculations of a 100 ppm sulphide isopleth with mapping to indicate "any residences, residential areas, cities, towns, villages, hamlets, parks and recreation areas or other populated areas ..." within the isopleth (ERCB Regulations section 4.(2)(b)(i)). That isopleth, which represents a minimum limit for toxic exposure, is established for safety consideration and review.

While the regulations for pipeline development are basic, the requirement as outlined in the Board's publications are extensive. Guide G-24, Pipeline Applications to the ERCB, A Guide to Content, documents a company's responsibility with respect to the environment, right-of-way, historic, and economic justification. The emphasis, while not obvious, is upon the procedure of preliminary discussion with government agencies and full public disclosure of the project. The procedure is discretionary at this point and is done with a view to avoiding conflicts and incorporating suggestions into the

project proposal. For major projects, most utilities voluntarily engage in considerable discussion at this stage. To the extent that landowners express their concerns at this stage, and the utility is able to accommodate such concerns, later conflicts or confrontations may be minimized or eliminated, and arbitration by regulatory authorities may be avoided.

For electrical transmission lines, the process is very similar. The regulations, as they affect electrical transmission corridor development are general. The specific detail for applications is presented in the Board's publication Guide G-22, Guidelines Respecting an Application to Construct or Alter an Electric Transmission Line. As with pipelines, the details of the guide cover project description, technical, environmental, and economic information. (That information, unlike pipelines, is required for a 1600-metre wide corridor.) The emphasis, again, is placed on early discussion of those items. The Guide's introduction states that:

"Applicants are encouraged to disclose their initial project concept to the public at the earliest opportunity and (to) develop an information program to inform interested members of the public about their project. The application to the ERCB should include a discussion of the nature and extent of the communication." (ERCB, Guide G-22, 1981: 1)

Prior to submitting a formal application to the ERCB, a utility also would inform Alberta government departments of its plans via a preliminary referral process. In addition, a utility would obtain any necessary development permits from municipalities, counties and any regional government agencies. That circulation constitutes the second stage of the approval process.

The review process is coordinated by Alberta's Ministry of the Environment and includes input from many other government departments such as Agriculture and Energy and Natural Resources. That is what is known as Alberta's "one window" approach to energy developments. Each department checks that a specific proposal meets its regulations and standards. Deficiencies and concerns are noted by the department and forwarded to the ERCB. A government department may set its own requirements for the project, including such items as what equipment must be used, what jobs must be performed, and even how some jobs will be performed.

5.3.2 Route Approval Process

The third stage of routing determination is initiated by formal application to the ERCB. (See Figure 5.2 for the application handling procedure).

Figure 5.2
Energy Resources Conservation Board
Application Handling Procedure
(Alberta)

90a

Source: Alberta Energy Resources Conservation Board
 Internal Document

Major pipeline and hydro-electric transmission development projects follow similar information review and approval processes. As previously mentioned, the information requirements are outlined in Guide G-24 for pipelines and G-22 for hydro lines. Apart from the technical information requirements, an applicant must address the components of: agriculture, forestry, fish and wildlife, recreation, residences, visual and environmentally sensitive areas and potentially affected mineral resources (ERCB Guide G-24, 1981: 7). Those components are required to be compared when an applicant advances more than one possible development route. Although alternative route review is not required, the literature suggests that it should be considered.

The applicant is advised to evaluate the routes, noting any environmental, social, economic, or engineering trade-offs, as well as to justify the final methodology in preferred route determination. In fact, for hydro transmission applications a comparative chart forms part of the guide. (That guide is cross-referenced in the pipeline development guide.) In addition, it is recommended to the applicant to provide documentation of any pre-application public meetings.

Once a utility believes that it can justify the need for a new transmission line, through its comparative studies relating to the design and route, it prepares a formal application outlining its proposal and providing its supporting information. The application is then filed with the ERCB whose approval is required before the development can proceed. The ERCB reviews the application and, before a permit can be issued, it must be satisfied that:

- (i) there is a need for the proposed facility;
 - (ii) the proposed location is suitable;
 - (iii) the landowners and occupants have agreed to the route or have had an opportunity to present objections regarding the facility to the ERCB; and
 - (iv) the facility has been designed in accordance with the latest standards and regulations to ensure safe operation.
- (Energy Resources Conservation Board, July 1985: 1)

On receipt of an application the ERCB would forward a copy of the said application to affected provincial agencies, including the Department of Agriculture. Each agency would be allowed an opportunity to formally review and comment upon the application. Should clarification of any portion of the application be required or if there are deficiencies, the ERCB may request additional information from the utility.

5.3.3 Public Notification and Hearing

As can be seen from the wording of section 29(2) of the ERC Act, presented earlier, the ERCB must have regard for the position of anyone who could be directly and adversely affected by its decision on an application. To have that regard, the ERCB initiates the fourth stage of the route approval process, which may or may not require public hearings. If a surface lease or easement, or other consent has been granted by the landowner, it is probably reasonable for the ERCB to judge that he has no objection and does not wish to have a hearing. If the applicant has conducted some sort of public information program, such as an open house, and can adequately document why there would be no opposition, the ERCB would also probably decide that a hearing is not necessary. The ERCB has for a long time encouraged proponents of major projects to undertake communication programs for residents in the area to provide them with needed information and give them an opportunity to ask questions. (Energy Resources Conservation Board, July 1985: 2)

If an applicant cannot provide information to show that he has acquired all necessary leases, easements, or consents, the ERCB will usually publish a notice of the application ("notice for objection") in the local, and

often the major, newspapers and send the notice by mail directly to the affected landowners and occupants. If the project is a small one, and only very few people are affected, the ERCB may dispense with newspaper publication. If there is no response to the notice by the date specified, and if the application is otherwise satisfactory, the ERCB will usually issue the requested approval.

The Rules of Practice, which are regulations under the ERC Act, provide that the ERCB must give at least ten days notice, that is, ten days between the date that the notice is issued and the date that is specified for receipt of objections and the date of the hearing. In practice, the ERCB usually provides a period of three to four weeks for notice for objection, and four to five weeks for notice of hearing, as 10 days is usually too short a time for an interested party to obtain a copy of the application, review it, and take a position with respect to it.

It should be noted that, if an applicant is aware of a party who is certain to object, and there is no means of having the objection withdrawn, such as by further meetings or negotiations, he could request a hearing immediately. In that manner, the period for the notice for objection is avoided.

The ERCB's notices state that a copy of the particular application may be obtained from the applicant and his address is given in the notice, along with the name of a contact person. In addition, the ERCB places a copy of the application in its Records Centre in Calgary for public viewing. Occasionally, a copy is placed in the ERCB's field office or in a public place like a library for easy access by the public.

If a response (objection) is received by the ERCB as a result of the notice, by a person having a bona fide interest in the matter, the ERCB will usually set the application down for a public hearing to give each party an opportunity to be heard and to cross-examine. In some cases, such as when only one or two objections are received, the ERCB may ask the applicant to contact the interveners and attempt to have the objections resolved. In still other cases, ERCB staff, the applicant's representatives, and the people objecting may meet to attempt to resolve the objections. Those kinds of meetings have been successful in having objections withdrawn.

If the application is set down for a hearing, the ERCB will issue a notice of hearing, specifying the time and place for the hearing, and a date by which submissions from interveners are to be received by the ERCB and the applicant.

At each hearing, the Board endeavors to take into account the uniqueness of the matters before it and to maintain a high degree of flexibility as to the procedure it will follow. Generally, however, the procedure at each hearing is regulated by three rather general principles. The first is that each participant is treated fairly, and has a reasonable opportunity to ask questions and to make representations and explanations. Second, there is an effort to ensure that the hearing proceeds in a reasonably logical and orderly fashion, such that the Board and the participants alike will not be lost in a maze of discussion and paper. Third, provision is made for general rules of conduct, to ensure that the hearing is conducted in an expeditious fashion and to ensure that no person will be precluded from expressing any reasonable view, or will have an unfair advantage in making any representation. The details of the hearing procedure are set out in Figure 5.3. Once a hearing is completed, a written decision with reasons is prepared and issued to all of the participants registered at the hearing. With the issuance of the reasons the final route of the transmission facility is approved.

Figure 5.3 Usual Hearing and Inquiry Procedure (Alberta)

96a

Award of Costs

A unique feature of the Alberta route approval process is the awarding of costs for hearing participation to interveners. Adopted in 1978, the Local Intervenors' Costs Regulations permit persons who might be affected by proposed energy projects to be reimbursed for reasonable costs incurred in making an intervention at a public hearing convened by the ERCB. Such costs are normally paid by the applicant whose application caused the public hearing.

A claim, which may begin from the date of intervention commencement*, must be filed within 30 days of the completion of the hearing. An additional 28 days is allowed for the applicant to reply to the cost claim and subsequent response by the claimant. When the claim procedure has been completed, the Board would issue an order setting out:

- (i) the amount of the award;
- (ii) who shall pay it; and
- (iii) to whom the payment shall be made;

* Intervention commencement could start at the pre-application stage if, at that time, an intervenor had submitted a 'letter of interest' to the ERCB.

and a letter summarizing the breakdown of the award and the reasons for it.

To date, several cost award hearings have been held by the ERCB. One award, stemming from those hearings, exceeded 75,000 dollars. That award was with respect to a processing plant at Quirk Creek (Decision D 83-8 ERCB, 30 June 1983).

5.4 Expropriation and Compensation

Within Alberta, a company may negotiate for lands at any stage of the overall procedure and landowners are free to adopt any position they may choose in negotiating. In the early stages of the process, a landowner is not compelled to negotiate with the company at all. Once the ERCB issues a permit, the utility must then proceed to acquire easements along the route. The only onus on the ERCB in granting a permit is to ensure that landowners and occupants have agreed to the route or have had an opportunity to present their objections to the ERCB, regarding the facility.

Following the issuance of a permit, the administration of land acquisition matters, other than owner-applicant negotiations, falls to the SRB.

Established by the Surface Rights Act (SR Act), the SRB is responsible for the issuance of right of entry orders (in the event that negotiations have failed), compensation determination (when agreement cannot be reached), and for the administration of fees and hearings related to its responsibilities. It becomes involved only if easements cannot be obtained through mutual agreement between the landowner and the utility.

The owner or occupant could submit an objection in writing to the SRB with respect to any matter except matters dealing with the amount of compensation. The matter of compensation payable for the right of entry will be determined by the SRB after a separate hearing; therefore, it is not considered as an objection to the granting of a right of entry.

On receiving an objection, the SRB would decide whether a hearing should be held before a right of entry order is granted, or whether the objection deals with matters of compensation. The Board would then advise the person making the objection of its decision. It is possible, if land acquisition has commenced prior to the issuance of an ERCB permit, that an objection would be more appropriately addressed by the ERCB. In that event, the SRB would forward the objection.

Entry Fee

The SR Act requires that the operator shall pay to the owner of the land an entry fee equal to the lesser of \$5,000 or \$500 for each acre of land granted to the operator or a proportionate amount not to be less than \$250 where the land granted is less than one acre. This entry fee is payable with respect to each titled unit of the owner and must be paid before the operator takes possession of the land granted under a surface lease or right of entry order. The entry fee is payable in addition to any compensation which is payable under a surface lease or which may be determined by the Board to be payable for a right of entry order. The entry fee is not payable with respect to lands owned by the Crown.

Under a right of entry order, if there is a dispute as to the titled owner named in the order who is entitled to the entry fee, the operator may pay such entry fee to the Board. The Board, at the time it makes a compensation order, would determine who is entitled to receive the entry fee and shall order payment of the entry fee to that titled owner. The determination by the Board as to whom payment of the entry fee is made may be appealed to the Court of Queen's Bench in the same manner as a

compensation order (Alberta Agriculture, Surface Rights in Alberta, 1984: 5).

Determining Payment for Right of Entry

The amount of compensation payable by the operator for the right of entry is determined by the Board after a compensation hearing at which it receives evidence from the owner or occupant and the operator with respect to:

- (i) the value of the land (as defined in the SR Act);
- (ii) the loss of use;
- (iii) the adverse effect of the operator on the remaining land of the owner;
- (iv) nuisance, inconvenience and noise;
- (v) damage to the land; and
- (vi) any other factors which the Board considers proper.

The Board can also consider the cost of relocation of a residence (if this is necessary as a result of the project), damage to other lands of the owner, loss or damage to livestock, and time and expense of recovering strayed livestock (Alberta Agriculture, Surface Rights in Alberta, 1984: 6).

Payment for Right of Entry

If the owner and operator enter into a surface lease, the owner would be paid the first year's consideration before the operator goes onto the land. Where an agreement cannot be reached and a right of entry is required, the operator would be required, after the right of entry order is issued and before entering on to the land, to pay the owner an amount equal to 80 per cent of the first year's consideration as shown in the last written offer made by the operator to the owner prior to the application to the Board for right of entry.

If there is a right of entry order, the compensation hearing will be held within 30 days of the date of the right of entry order, although that time period may be extended by the Board upon notice to the parties involved. The compensation is retroactive to the date of the right of entry order. The compensation order would be issued within 30 days of the date of the compensation hearing, and that time period could also be extended by the Board upon notice to the parties. The operator would pay the compensation upon receipt of a copy of the compensation order, unless either the operator or the respondent decides to appeal the order (Alberta Agriculture, Surface Rights in Alberta, 1984: 6-7).

Synopsis

Applications for transmission facilities in the Province of Alberta are administered by the Alberta Energy Resources Conservation Board. There are, however, separate pieces of legislation for pipeline and electric transmission facilities. The ERCB is required to convene a public hearing but does have discretion to dispense if no objections to the proposal are submitted.

In the Province of Alberta, the emphasis is on early public notice of a project. Proponents are encouraged to obtain individual landowner approvals for a transmission route prior to applying for a permit. Where necessary lands have not been secured and where the proponent cannot justify its route, the ERCB will publish notification of the application and, with objections, will proceed to a hearing. An important feature of the Alberta process is that costs for hearing participation may be awarded to affected owners and interested parties. This is a feature only duplicated by the National Energy Board's detailed route process. This can be seen in the comparison set out in Table 8.1.

With the issuance of a permit from the ERCB, the detailed route is approved. The responsibility for

compensation determination is then undertaken by the Alberta Surface Rights Board, if mutual agreement between the proponent and the landowner has not been reached.

We have now dealt with two provinces which deal with energy transmission approval through a single agency. Let us now deal with the Province of Ontario which utilizes separate agencies and several pieces of legislation for approval of pipelines and powerlines.

CHAPTER 6

ONTARIO

6.1 Overview

Five statutes regulate major energy corridor development in Ontario:

- (i) The Power Corporation Act, (the PC Act);
- (ii) The Environmental Assessment Act, (the EA Act);
- (iii) The Consolidated Hearings Act (the CH Act);
- (iv) The Ontario Energy Board Act (the OEB Act); and
- (v) The Expropriation Act (the Exp. Act)

The first three statutes regulate electric energy transmission corridors. The second last statute regulates oil and gas pipeline corridors other than distribution or production pipelines. The last statute relates to expropriation.

Up to the proclamation of the EA Act, 20 October 1976, the PC Act established Ontario Hydro as an autonomous body responsible for all facets of hydro corridor development. Pursuant to section 56 of the PC Act, Ontario Hydro is responsible for,

"...the generation, transmission, distribution, supply, sale and use of power... (and) has power and authority to do all such things as in its opinion are necessary, usual or incidental to the furtherance of such purposes..."

In exercising that power, and subject to the authorization of the Lieutenant Governor in Council, Ontario Hydro can,

"...generate and produce power at places in Ontario... and transform, transmit, make available and use, distribute, deliver, sell... such power and connect the works constructed..." (Section 23(2)(c)).

In addition, Ontario Hydro upon its own recommendation may be authorized by the Lieutenant Governor in Council to

"acquire by purchase, lease or otherwise, land ... made useful for generating, transforming, transmitting...; enter upon, take possession of, expropriate... any such lands... and develop, utilize, use... for any purposes of this Act. (Section 23(2)(a))

Required expropriations are subject to the Expropriations Act, R.S.O. 1980, Chapter 148 (Exp Act).

With the proclamation of the EA Act, all undertakings - defined as an enterprise or activity of the Crown, a public body(ies) or of a municipality(ies) and including Ontario Hydro, became subject to review and

approval by the Ministry of Environment or, on referral, by the Environmental Assessment Board. That Act requires Ontario Hydro to:

- (i) prepare an environmental assessment of the proposed transmission corridor and alternative corridors;
- (ii) to evaluate alternative corridors according to environmental effects and other criteria; and
- (iii) to submit the environmental assessment to the Minister.

Upon receipt, acceptance and initial review of the Environmental Assessment by the Minister, affected parties must be notified of that acceptance. The Minister, or other interested parties, may request that the Environmental Assessment Board undertake public hearings to review all, or a part of, the assessment document. Following notice and the holding of a public hearing(s), the Environmental Assessment Board submits its findings and recommendations to the Minister. Those findings and recommendations may include refusal of the project, modifications to the project, acceptance of the project, or acceptance with conditions. Upon receipt of the Board's decision, the Minister has twenty-eight days during which he may accept, substitute or vary the decision with approval of the Lieutenant Governor in Council.

The last statute directly affecting hydro transmission corridor development is the Consolidated Hearings Act. Introduced in 1981, the CH Act may be applied where an undertaking is proposed that requires, or may require, more than one hearing before more than one tribunal. The Act, by schedule, lists those other Acts requiring public hearings and which may be consolidated. Three of those, the EA Act, the Exp Act and the Ontario Water Resources Act (the OWR Act), may apply to hydro electric transmission corridor development. Hence, the CH Act may be used to regulate an Ontario Hydro project.

The CH Act, allows for the establishment of a "Consolidated Board" composed of members of the Environmental Assessment Board and the Ontario Municipal Board. On application to the Hearing Registrar by the proponent, or by application of an interested party to Divisional Court, and subsequently by an order to the proponent, an energy transmission corridor proposal can be referred to the Consolidated Board. Once established, that Board assumes the authority provided to the original approving boards and can render any decision that those original boards or tribunals could have made. In the case of an Ontario Hydro project, the Consolidated Board could approve the project route, conditions and expropriation as it saw fit.

The interesting feature of the CH Act, which does not form part of the Environmental Assessment, is the ability of the Board to award costs for hearing participation. At the time of writing, the author was not familiar with any cost claim decisions (Ontario Hydro, Letter, 23 July 1986: 1-2).

Unlike Ontario Hydro transmission corridors, oil and gas pipeline projects are administered by a single agency, the Ontario Energy Board (the OEB). That agency, with the assistance of the Ontario Pipeline Coordinating Committee (the OPCC), guides and approves pipeline facilities and transmission corridor site selection and the land acquisition and expropriation procedures of proponents. Only the determination of compensation remains apart from that agency, as provisions of the Exp Act apply.

6.2 Agencies and Legislation

Ontario Hydro, as a Crown Corporation established and maintained under the PC Act, is responsible for generation facilities and all major power transmission systems in Ontario. Its power and functional direction as a corporation is drawn from section 56 of the Act which states:

56. "The purposes and business of the Corporation include the generation, transmission, distribution, supply, sales and use of power and, except with respect to the exercise of powers requiring the prior authority of the Lieutenant Governor in Council under this Act, the Corporation has power and authority to do all such things as in its opinion are necessary, usual or incidental to the furtherance of such purposes and to the carrying on of its business. R.S.O. 1970, c. 354, s. 58; 1973, c. 57, s. 2."

And, its powers related to the development of transmission facilities, which power is controlled by the Lieutenant Governor in Council, is drawn from among the provisions of section 23 of the Act. Generally, the implementation of Ontario Hydro's powers are exercised through section 23(1):

- 23(1) "The Lieutenant Governor in Council may authorize the Corporation at any time and from time to time to acquire by purchase, lease, or in any other manner, or without the consent of the owner thereof to enter upon, take possession of, expropriate and use, any land, lake, river, stream or other body of water or watercourse, and temporarily or permanently to divert or alter the boundaries or course of any lake, river, stream or other body of water or watercourse, or raise or lower the level of the same or flood or overflow any land."

However, the planning, development and authorization of projects is exercised under sections 23(2)(a), (c), (d) and (i), which state:

23(2) In particular, but without limiting the generality of subsection (1), the Lieutenant Governor in Council, upon the recommendation of the Corporation, may authorize the Corporation to,

- (a) acquire by purchase, lease or otherwise, land, waters, water privileges, water powers, buildings and works used for, or adopted or useful for, or capable of being used or made useful for generating, transforming, transmitting, distributing or selling power, enter upon, take possession of, expropriate, acquire and use any such land, waters, water privileges, water powers, buildings and works without the consent of the owner thereof, or of any person in any manner entitled to any right, title, interest claim of demand thereto or therein; and have and hold them however acquired or obtained, and develop, utilize, use, maintain, operate and improve them for any of the purposes of this Act;
- (c) generate and produce power at places in Ontario by the use of water, coal, steam or oil, or by any other means, and transform, transmit, make available for use, distribute, deliver, sell, supply and generally use for the purposes of the Corporation such power and connect the works constructed or installed for these purposes with any system;
- (d) for the purposes of clause (c) acquire by purchase lease or otherwise, hold, improve and use real and personal property, acquire by purchase or otherwise water, coal, steam, oil and other supplies, and construct, maintain and operate works, including without limiting the generality of the foregoing, development works, generating plants transformer stations, transmission lines, switching and regulating works, distribution lines, access and other roads, and all other equipment, plant and works and things required for or incidental to any of such purposes;
- (i) enter upon, take and use, without the consent of the owner thereof, any land upon which any water power or privilege is

situate, or any lake, river, stream or other body of water that, in the opinion of the Corporation, is capable of improvement or development for the purposes of providing water power, and construct such dams, sluices, canals, raceways and other works as are considered proper or expedient for such purposes, and flood and overflow any land to the extent to which the Corporation considers necessary for the purposes of providing storage of the water or for any other purpose in connection with such works, and contract with any municipal corporation, company or individual for the use of any of the improvements or works so made, on such terms and conditions as may be agreed upon;".

Having determined the need for additional facilities and the location of those facilities, through the implementation of the EA Act, Ontario Hydro is empowered to utilize the Exp Act to secure the necessary land rights for the development of those facilities pursuant to section 33 of the PC Act.

"Where a power exercised under section 23 or 32 constitutes an expropriation or injurious affection, the Expropriations Act applies."

That power is exercised when agreement cannot be reached between Ontario Hydro and the affected owner concerning the land required, the compensation offered or both.

Since 1976, the single, most influential legislation controlling electric transmission corridor location and other major, private and crown undertakings has been the EA Act. That legislation has, as its purpose,

"the betterment of the people of the whole or any part of Ontario by providing for the protection, conservation and wise management in Ontario of the environment" (Section 2, EA Act, Chap. 40 R.S. 1980).

By definition, within the Act, environment includes land, water, air, plant and animal life, socio-economic and cultural conditions, any effects resulting from the activities of man and the interrelationships of any of the preceding factors.

Under the legislation, a proponent of a major development project is required to prepare an environmental assessment according to pre-established criteria. That assessment is to be submitted to the Minister of the Environment, who has a pre-established review procedure to follow, and it may be submitted to an Environmental Assessment Board which also has an exacting review procedure to follow. No project may proceed to the development stage unless the environmental assessment has been approved, or the project has been exempted from the environmental assessment procedure, or the project has received prior environmental review as part of a "class environmental assessment" pursuant to section 29 and 41 of the Act (Ontario Hydro, Letter, 23 July 1986: 1-2).

To date, Ontario Hydro has secured three class exemptions: Exemption Orders OHE-5, OHG-7 and OHL-12. Those exemptions allow Ontario Hydro to plan for, to acquire land for, and to design and construct:

- (i) minor transmission lines, longer than 2 km which;
 - (a) are capable of operating at a nominal voltage of 115 kV or less, and
 - (b) between 115 kV and 500 kV but which are less than 25km,
- (ii) minor transformer stations operating between 115 kV and 230 kV or extensions to existing stations;
- (iii) minor distributing stations and communications towers where land rights had been acquired previously; and
- (iv) transmission line replacement and upgrading of lines between 115 kV and 500 kV.*

A fairly recent addition to Ontario legislation, which influences major electric transmission corridor development approval, is the CH Act. That Act allows for the creation of a Consolidated Hearing Board to hear, in

* Ontario Hydro, Route and Site selection Division, Program Environmental Assessment Document, P.1)

total or in-part, applications which require formal hearings and subsequent approvals pursuant to, among others, the EA Act, the Exp Act, the OWR Act and the Planning Act.

The Consolidated Hearing Board is established to hear a particular project upon application by a proponent, or by an interested party upon application to Divisional Court which in turn directs the proponent to apply. On receipt of an application, the Hearing Registrar advises the chairmen of the Environmental Assessment Board and the Ontario Municipal Board. The chairmen, jointly, determine the composition of the Consolidated Hearing Board. Once established, that Board assumes all the powers of the Boards for which it is acting and may issue approvals, directions or apply conditions pursuant to the original establishing legislation.

A significant feature of the Consolidated Hearing Board, as it affects Ontario Hydro project approvals, is that the Ontario Municipal Board members bring with them experience gleaned from administration of the Ontario Planning Act. As Ontario Hydro is not subject to the Planning Act, direct considerations or implications of that Act, are unusual; other than those considerations of the existing planning infrastructure (development) which may be considered under the EA Act.

Transmission corridors for oil and gas pipeline projects in Ontario are under the exclusive jurisdiction of the OEB. That agency, through the Act and its regulations, establishes the information requirements to be filed by an applicant; conducts necessary public hearings concerning the project development and route selection; and, issues expropriation orders for the securement, by the proponent, of the necessary lands along the transmission corridor.

Assisting the OEB in the exercise of its jurisdiction is the OPCC. That committee, composed of representatives of each of the provincial ministries and chaired by a member of the OEB is responsible for project review at the application stage; highlighting provincial issues at the hearing stage; and, advising the OEB chairman of construction deficiencies or non-compliance with an OEB order during construction and clean-up.

Prior to construction of any pipeline, a proponent must obtain a Leave to Construct Order from the OEB pursuant to Part III of the OEB Act. The content of an application for leave to construct is guided by two additional documents produced by the OEB but which do not form part of its regulations. Those documents are entitled:

Information required to be filed by applicant for Leave to Construct and Exemption; and

Environment Guidelines for the Construction and Operation of HydroCarbon Pipelines in Ontario.

Both documents describe the approval process of the OEB and outline procedural requirements which should be followed by the proponent in preparing a formal submission for Leave to Construct.

6.3 The Application Process

6.3.1 Initial Planning

6.3.1.1 Electric Transmission Corridors

Planning for major transmission corridors may be initiated by Ontario Hydro, as an internal audit of power demand; by the Lieutenant Governor in Council, pursuant to section 22 of the PC Act - by which Ontario Hydro is requested to report on water powers; or, by a Commission on electric power requirements, such as the Royal Commission of 1979 whose report initiated the Eastern Ontario Grid Expansion program. Ultimately, however, regardless of which agency identified the need, it is Ontario Hydro's responsibility to meet that demand through the planning and subsequent authorization of transmission corridors and other facilities.

Information requirements and initial planning for an Ontario Hydro project are dictated by the legislation. Noting the subject matter of an environmental assessment and the combination and interrelationships of the variables generated from the EA Act's definition of environment, it is apparent that large amounts of preliminary information and liaison are required to satisfy legislative needs. Section 5(3) of the EA Act sets out what must be submitted in an environmental assessment, namely:

- 5(3)(a) a description of the purpose of the undertaking;
- (b) a description of and a statement of the rationale for,
 - (i) the undertaking,
 - (ii) the alternative methods of carrying out the undertaking, and
- (c) a description of,
 - (i) the environment that will be affected or that might reasonably be expected to be affected, directly or indirectly,
 - (ii) the effects that will be caused or that might reasonably be expected to be caused to the environment, and
 - (iii) the actions necessary or that may reasonably be expected to be necessary to prevent, change, mitigate or remedy the effects upon or the effects that might reasonably be expected upon the environment, by the undertaking, the alternative methods of carrying out the undertaking and the alternatives to the undertaking; and

- (d) an evaluation of the advantages and disadvantages to the environment of the undertaking, the alternative methods of carrying out the undertaking and the alternatives to the undertaking.

To illustrate the complexity of the procedure, a brief overview of Ontario Hydro's process for its Eastern Ontario Study is provided. The route stage studies for this project began in the fall of 1982.

In 1979 the Royal Commission on Electric Power Planning supported Ontario Hydro's position that major additional bulk power facilities were required for Eastern Ontario. Facility design indicated that two 500 kV transmission lines were required between Kingston and Ottawa and a single 500 kV line was required between Ottawa and Cornwall. Although not required by legislation, Ontario Hydro obtained approval for the overall design from a Consolidated Hearing Board established by the CH Act (personal communication). From the date of that approval, Ontario Hydro established the following flow chart of events. (Figure 6.1)

Although this process commences with "Route Stage Studies" in the fall of 1982, actual planning by Ontario Hydro had commenced in early 1980 (personal communication). At that time, the study area was defined

Figure 6.1
Project Life Cycle of Eastern Ontario
Plan and Route Stage Studies

119a

Source: Ontario Hydro

to include environmental information... as well as the location of physical obstructions in the landscape, municipal boundaries, existing transmission facilities, and the other linear severances. That preliminary information was used before the Consolidated Hearing Board and, subsequently, was enhanced through detailed investigations of provincial, municipal and other agency land-use planning programs and activities. That information included data concerning agricultural, biological, forest, heritage, mineral and recreational resources as well as data on landscape appearance and human settlement.

As noted from Figure 6.1, an approximate one year period, the fall of 1982 to the spring of 1984, was established to determine preferred alternatives. Although Figure 6.1 suggests that preferred alternatives would be a planning exercise by Ontario Hydro, in fact, the preferred route selection progress was more a consolidation of public agency and interested party review, and the incorporation of that review, in conjunction with Ontario Hydro needs, to define a preferred route. The interesting feature of this methodology is that, subsequent to this process the Ministry of Environment produced a document entitled "Guidelines for Pre-Submission Consultation Associated with the Environmental Assessment Act, February 1985", which imitates Ontario Hydro's direction. For comparison, the

reader can refer to Figure 6.2 (Basic Flow Diagram of the Environmental Assessment Act, 1975).

The process of preferred, alternative-route selection commenced with Ontario Hydro creating regional committees (east and west) from representatives of municipalities, provincial or federal agencies, regional interest groups or private sector representatives who were interested in the study area. Individuals of those committees were provide with a "Corridor Location Comment Form" on which they ranked, for avoidance, sub-criteria of the original data base compiled. During four subsequent meetings, the ranked sub-criteria were applied to computer generated resource data base mapping to define corridor locations, alternative corridors, alternative routes within corridors and, finally, a recommended route within a preferred corridor. In concert with this sequence was the development, through discussion, of mitigative measures to reduce transmission corridor development impacts.

To conclude the discussion on initial planning for electric transmission corridors in Ontario, a few observations of the role of that process are in order. The purpose of an environmental assessment is to allow government and the public an opportunity to review and participate, if required, in the determination of an

Figure 6.2
Basic Flow Diagram of the Environmental Assessment Act 1975

optimum route for a particular project. Ontario Hydro, through its initial planning process, effectively reduced the potential for a "required" hearing. The representatives chosen to sit on the regional committee and to determine resource values were selected from affected provincial agencies, municipalities and interest (lobby) groups. Those individuals had transferred to them, from Ontario Hydro, the onus of determining priorities. In so doing, Ontario Hydro eliminated its need to consult extensively with affected agencies as individual regional committee members were expected to canvass their own agency. Therefore, at the time of submission of the Environmental Assessment, the step following initial planning, Ontario Hydro comfortably could state that the views expressed were essentially those of the affected parties thereby reducing adverse comment because of an "embarrassment" factor (non consideration of regional concerns).

6.3.1.2 Pipeline Corridors

To say that planning of hydrocarbon transmissions corridors in Ontario is not rigorous, because they are approved under the OEB Act and not the EA Act, would be inaccurate. The OEB utilizes its own Environmental Guidelines and a pre-submission review process to ensure

appropriate planning consideration. The OEB has, as its consultant and application review body, an inter-ministerial committee, the OPCC, which can summon a detailed, specific review of any local or regional interest affected by a project. The scenario of information review and review transfer capabilities is readily apparent from Figure 6.3. The result, therefore, is that initial planning is dictated by ministerial contact even though the proponent has the onus of application preparation.

An application for leave to construct must include an environmental report. That report represents the initial planning component of an application. The proponent is encouraged to file material on the agricultural, geological, hydrological, topographical and biological resources and on the land-use implications as they are affected by a project. That material is combined to form a number of alternative corridors which are then assessed according to project effects, required mitigation measures and engineering feasibility and costs. As emphasized in the guidelines, that material should be generated in consultation as, "the interests of landowners, farmers, mining claims holders, conservation and recreation authorities and local municipal governments are extremely important in developing the final route for the proposed location of a pipeline ... and ... the applicant should

Figure 6.3
Schematic of Study Development Leading to Leave to Construct Applications
Before the Ontario Energy Board

Source: Environmental Guidelines for the
 Construction and Operational Hydrocarbon
 Pipelines in Ontario, Ontario Energy Board

*depending on magnitude of project, distribution
 of map (1:20 000) showing study corridor and
 alternate routes is sufficient

report on the status of discussion with these parties and plans for acquisition of easements, when the application is filed with the OEB" (Guidelines P. 5).

The OEB's emphasis on initial planning does not end with discussion and written information. It assumes that a proponent would follow the guidelines and prepare detailed mapping to substantiate route review. Recommended scales of that mapping vary for the evaluation with a 1:5000 scale suggested for water crossings and a 1:50,000 suggested for alternate route description. Similarly, for initial planning of a route location on a given owner's property, preliminary staking or an air photo mosaic description is suggested in order to assure that adequate consideration is given to detailed route location.

6.3.2 Route Approval

6.3.2.1 Electric Transmission Corridor

The procedure for major electric transmission corridor approval, in Ontario, is dictated by the EA Act. The Act establishes three distinct decision paths each of which is triggered by the need, or lack of need, to convene a public inquiry by the Environmental Assessment Board.

The onus for determining that need rests with the Minister of Environment. In essence those decision paths may be described as:

- (i) acceptance of the environmental assessment and issuance of Leave to Proceed by the Minister, alone;
- (ii) acceptance of the environmental assessment by the Minister with the requirement that Leave to Proceed be determined by the Environmental Assessment Board; and
- (iii) The Minister's decision that the environmental assessment requires public review by the the Board which also entails the Environmental Assessment Board determination of Leave to Proceed.
(Figure 6.2)

Each of the three decision paths under the EA Act are initiated by the same process. An environmental assessment is submitted to the Minister who, upon receipt of the document, must cause a review to be undertaken. When the review is completed, the Minister is required to provide notice of receipt, of the review and of the place(s) where those documents can be viewed. Thirty days following, or as set out in the notice, the Minister must decide whether the assessment document should be amended, supplemented with additional study or whether it should proceed along either of the three decision paths. Should additional study be required, the decision to proceed is deferred pending completion and review of the study.

Where an application to review the method of proceeding with the project, which is not frivolous or vexatious, is received, the Minister must require the Environmental Assessment Board to hold a public hearing. In that event the Environmental Assessment Board establishes the time and place for the conduct of the hearing, provides notice of the hearing and reviews those matters referred to it by the Minister. On deciding on the project, the Board must give notice of its decision. Following notice of the decision, the Minister with Cabinet approval, has twenty-eight days in which to accept, vary or substitute the decision, or require a new hearing. Where the Environmental Assessment Board decision is not varied or substituted and a new hearing is not required, the Board's decision is final. In either event, notice of the Minister's decision must be given.

The final decision path that may be followed, a complete public review of all facets of the application by the Environmental Assessment Board, is initiated when the Minister determines that the environmental assessment document, as submitted, amended or supplemented, warrants full public discussion. In this situation notice must be provided to the Board. The Board then determines the time and place for the public inquiry and provides notice of that determination. From the evidence received during the

hearing, the Board renders a decision on the acceptance of the environmental assessment and on the approval to proceed with the project. Notice of that decision must be given to the public and the Minister. The Minister with Cabinet approval, then has a twenty-eight day period in which to vary or substitute the decision, or require a new hearing. The Environmental Assessment Board's decision stands if no changes or a re-hearing are required within that twenty-eight day period. In either event, notice of the Minister's decision must be made.

6.3.2.2 Pipeline Corridors

The provisions of the OEB Act and the consultative procedures of the OEB/OPCC make hydrocarbon transmission corridor approval straight forward and efficient. Following the flow diagram illustrated under Figure 6.3, the process may be described as follows.

Application for Leave to Construct, including the environmental report, is submitted to the OEB Chairman. Following receipt, the Chairman refers the application to the OPCC for review. An estimated sixty day period is set aside for the OPCC to circulate the application; to request additional information if necessary; and to accept the application. When the application is deemed complete, the

Board formally accepts the application and must conduct a hearing. That hearing may commence following a fourteen day waiting period - if no objections to the application are received, or following a thirty day period - where objections to the application have been received.

Following the conclusion of the hearing, the Board may grant Leave to Construct, with or without conditions, if the project is "in the public interest", or it may refuse the application. No apparent requirement exists for the Board to provide written reasons for its decision although recent approvals by the Board indicate that is the normal practice.

6.3.3 Notification and Hearing

6.3.3.1 Electric Transmission Corridors

As with the route approval procedure, the formal notification and hearing procedures concerning transmission corridor selection are controlled by provisions of the EA Act. Any exceptions, which would occur prior to the submission of a project environmental assessment, would be the result of changes in the proponent's initial planning or as part of a public relations program. Indeed, that pre-notification procedure is endorsed by the Ministry to the extent that it has circulated guidelines - Guidelines

For Pre-Submission Consultation Associated with the
Environmental Assessment Act, February 1985.

For Ontario Hydro, the benefits associated with notification and pre-submission consultation are not lost. For the Eastern Ontario Transmission Line Study, newspaper notification was undertaken twice prior to the submission of the environmental assessment.

The first of those notifications preceeded the formation of the regional advisory groups. That notification, was general in nature; provided a contact reference for further information; and, allowed interested persons to be placed on an information bulletin circulation list.

The second notification followed the determination, by Ontario Hydro and the regional advisory group, of the alternative corridors. That notification also was general in nature; advised of the alternative corridor selections; and, provided specific open-house locations and meeting dates where the alternative corridors could be discussed. In addition, at the open-houses, a questionnaire - Eastern Ontario Study Comment Form - was issued. That questionnaire allowed a respondent to identify how he would be affected; to provide detailed

comments concerning specific environmental conditions; to provide additional information concerning route selection criteria; and, to rank-order certain identified route location criteria.

Formal notification requirements, under the EA Act, are initiated at four specific decision points of the approval procedure. Those are:

- (i) with the submission of the E.A. document by the proponent and the completion of the Ministerial review (notification is applicable to all three decision paths discussed previously);
- (ii) with the acceptance or amendment and acceptance of the E.A. document (notification applicable to Minister, alone, decision path);
- (iii) with the referral to the Environmental Assessment Board of the E.A. document or the project construction approval procedure and the establishment by that Board of the time and place for the public hearing (notification applicable to Minister and E.A. Board and the E.A. Board decision); and
- (iv) with the Cabinet approved Ministerial decision to
 - (a) accept, accept with conditions or refuse the application (Minister, alone, decision path)
 - (b) accept, vary or reject the E.A. Board's decision to proceed or acceptance of the E.A. document and approval to proceed with or without conditions.

The interesting feature of the EA Act is that the parties required to be notified of a decision(s), are not consistent. Variance occurs between decisions reached by

the Minister, alone, and decisions of the Environmental Assessment Board.

With the submission of an environmental assessment document and following ministerial review, the Minister must provide notice of:

- (i) receipt of the assessment
- (ii) completion of the review
- (iii) the place(s) where the assessment and review may be inspected.

That notice is to be provided to the proponent, the clerk of each municipality in which the undertaking will occur and to the public and other persons as the Minister considers suitable and advisable.

Where the Minister has accepted or modified and accepted an environmental assessment, he is required to advise the proponent and any person who had made a written submission. There is no requirement to advise the public or the clerks of affected municipalities.

Should the Minister, in conjunction with Cabinet, give leave to proceed with the project, notification again is limited to the proponent and persons who had made a written submission. Provision is made, however, for the

Minister to give notice to other persons as he considers necessary or advisable (presumably the clerks of affected municipalities).

In those situations where the Environmental Assessment Board is required to conduct a hearing for assessment document approval and leave to proceed, or only leave to proceed, notification is reasonably consistent with the original notifications of the submission to, and review by, the Minister of the environmental assessment document. When the Environmental Assessment Board has determined the time and place for the conduct of a hearing, it is required to notify the proponent, the public, any person who has made a written submission and to such others as the Minister considers necessary or advisable.

Having come to a decision on the matters before it, the Board is required to give notice to the Minister, to the parties to the hearing, to those who made a written submission and to the clerk of an affected municipality. That decision, however, is not deemed to be final until it has been accepted, varied or substituted by the Minister with approval of the Lieutenant Governor in Council. That decision may also be rejected and a re-hearing constituted. In any of those events, notification must be provided to those persons notified of the Board's decision.

6.3.3.2 Pipeline Corridors

As evidenced in the discussion of initial planning, informal notice of the proposed undertaking would be provided to local and regional municipalities, provincial agencies and interest groups during the data collection and analysis for the environmental report. Individual, affected-owner notification could occur during that same period. In each situation, no requirement is established for that notification, although it is highly recommended in the "Environmental Guidelines".

Formal notification, under the Act, is required on two occasions: when the complete application is filed and when the time and location of the Board hearing has been determined. In those instances the Act is not specific as to which of the public, affected owners or interested parties, are to be notified. Nor is the Act specific on how that notification is to be undertaken.

With the filing of a complete application, the proponent is required to notify the Ministries of Agriculture and Food, Treasury and Economics, Intergovernmental Affairs and Transportation and Communications. In addition, notice is to be provided to "other persons" as directed by the Board. No further

definition is provided and no format for notice is given under the Act or the regulations.

Where a person receives notice and objects to the proposal, that person may object, in writing, to the proponent and to the Board. A fourteen day period, following the giving of notice, is provided for the submission of an objection. An additional fourteen day period also is set aside for the preparation of a reply by the proponent to the objection. That reply may be made to the objector and to the Board.

A second notice is required when the Board has determined a time and location to hear the application. Notice, in this instance, is required to be given to those same parties as the notice of the application.

Interestingly, no requirement for notice of the Board's decision is required under the Act. The onus for being further informed of approval, conditions of approval, or time and method of construction appears to rest with the interested party.

6.4 Expropriation and Compensation

6.4.1 Electric Transmission Corridors

The acquisition of property rights for the development of a transmission corridor is conditional upon approval of the project's environmental assessment, authorization by an Order-in-Council to proceed, and authorization by the Lieutenant Governor in Council to acquire lands. Having met those conditions, Ontario Hydro may acquire lands by negotiation procedures established by corporate policy or by expropriation procedures pursuant to the Exp Act. Even when negotiations are used, however, the procedures of expropriation for those same lands has been initiated. That assures acquisition of all necessary lands within a specific, planned time period and it guarantees affected owners the protections offered by the Ontario Municipal Board at their various hearing stages.

The practices followed by Ontario Hydro for the negotiation of necessary land rights is equally open to affected individuals as is the initial planning of the transmission corridor. Ontario Hydro notifies affected owners and local members of the provincial legislature, the mayor and reeves that the acquisition procedures are to commence. To further assist the negotiation process,

public information sessions are held; project field offices are established; and, information concerning the acquisition procedures is disseminated. That information consists of:

- (i) a property acquisition schedule
- (ii) the booklet "Field Practices"
- (iii) the booklet "Property and Compensation Policies".

The latter booklet clearly explains expropriation procedures, options for securing necessary lands, compensation determination and damage compensation.

With respect to the actual negotiation of land rights, Ontario Hydro offers either fee-simple or easement acquisition options. With fee-simple acquisition, an owner is offered market value for the required property plus up to 25 percent of the total purchase price for disturbances. In addition, Ontario Hydro offers occupational licences back to owners to allow continued use of the lands subject to certain restrictions. In the event that injurious affection covers the entire remnant portion of the parcel, the viability of the property is assessed and where the viability is lost, the owner is compensated for the entire property and provided an allowance for moving and relocation costs.

In certain instances, municipal zoning by-laws prohibit the creation of linear, fee-simple ownership due to the severing of the property and the subsequent withdrawal of rural land parcels from agricultural use. In those instances, Ontario Hydro acquires an easement only.

When acquiring easements, Ontario Hydro offers 75 percent of the market value for the easement; 31 percent of the market value for one hectare of land for a single tower plus 2 percent for additional towers; and, the owner is offered occupational rights with certain restrictions on building construction, machinery heights near wires and vegetation height limitations. Any damages on the right-of-way, which result from facility installation or maintenance, are compensated for by Hydro.

The acquisition of lands by Ontario Hydro without the consent of the owner, expropriation, is governed by the Exp Act. That statute defines clearly, and in very broad application, who is entitled to compensation as a result of the expropriation and how expropriation is to be conducted.

With respect to whom compensation may be allowed, Section 1 of the Act defines who is an "owner" and who is a "registered owner". Those definitions are as follows.

- 1.(h) "owner" includes a mortgagee, tenant, execution creditor, a person entitled to a limited estate or interest in land, a committee of the estate of a mentally incompetent person or of a person incapable of managing his affairs, and a guardian, executor, administrator or trustee in whom land is vested;
- 1.(k) "registered owner" means an owner of land whose interest in the land is defined and whose name is specified in an instrument in the proper land registry or sheriff's office, and includes a person shown as a tenant of land on the last revised assessment rolls.

Subsequent determination of when those individuals would receive compensation and under what conditions is determined by the legislation.

The procedure for authorization of expropriation by Ontario Hydro can be relatively short and may be completed in less than a four-month period. Having determined the lands required for its transmission facilities, Ontario Hydro must provide a Notice of Expropriation to each registered owner - by personal service; to the general public - by one publication each week for three consecutive weeks; and, to the approving authority, the Minister of Energy. Registered owners and the general public - those holding unregistered interest in property or those who may be injuriously affected - have a thirty-day period, from the date of personal service or the first publication, in which to provide the approving

authority with a request for a hearing. Upon receipt of a request for a hearing, the Minister must refer the matter to the Chief Inquiry Officer, appointed by the Lieutenant Governor in Council, who then assigns one or more Inquiry Officers to hear the expropriation case(s). The Inquiry Officer establishes a time and place for the hearing; notifies the parties of the hearing; conducts the hearing; and, prepares his recommendations to the Minister. Following receipt of the Inquiry Officer's report, the Minister has a ninety-day period in which to approve, approve with modifications or refuse the expropriation and to provide written reasons for that decision to the parties of the proceeding.

Two interesting features arise from the prescribed procedure. First, it is not clear from the legislation who actually authorizes Ontario Hydro to expropriate lands. Section 56 of the PC Act states that authorization must come from the Lieutenant Governor in Council. The Exp Act, however, clearly states that it is the Minister of Energy, Section 5(5). It is the author's view that general authorization for land acquisition comes from the Lieutenant Governor-in-Council following approval of the project and that the details of acquisition procedure, such as expropriation, are transferred to the Minister.

The second feature of interest concerns notification procedures. The Exp Act provides that notification must occur when approval is being sought. That first notification, evidently, can be precluded. During the course of the Eastern Ontario Expansion, when the preferred corridor was to be presented in a public hearing notice, the possibility of expropriation was provided in the public advertisement.

Even though the actual authorization for expropriation may be very short, the rights of the individual concerning compensation determination are in no way circumvented by the legislation. Affected owners can effectively maintain their properties for three months following authorization and can avail themselves of mutual agreements, negotiations or arbitration procedures in determining compensation. Those procedures are discussed below.

Following approval of the expropriation by the Minister, Ontario Hydro must register a plan of the required lands within three months. During the three month period following registration, or up to the date specified in the Notice of Possession, Ontario Hydro must seek the owner's permission to enter the lands. If permission is not forthcoming, Ontario Hydro may apply for an order from

the Ontario Municipal Board to allow entry for valuation purposes. To initiate entry for other purposes, application must be made to Divisional Court.

An optional procedure for Ontario Hydro is to register a preliminary plan which, within a two year period, can be converted to a final plan (Section 9.(5)) within thirty days of that registration. A Notice of Expropriation, a Notice of Election and a Notice of Possession also must be provided to the registered owner.

Within that same three month period following plan registration, if mutual agreement has not been reached between the parties, Ontario Hydro must serve the owner with an offer for the full amount of compensation, and must offer 100% of the market value as compensation, without prejudice to the owner's rights to compensation determination. The offer must contain a copy of the property appraisal. Should agreement not be forthcoming between the parties either may:

- (a) serve a notice of negotiation or
- (b) dispense with negotiation and serve a notice of arbitration on the other of the parties and on the Board of Negotiation or the Ontario Municipal Board as the situation dictates.

Where the parties proceed to negotiation, two members, appointed by the Lieutenant Governor in Council, hear the compensation case. Those two members, on reasonable notice, meet with the parties; must inspect the land expropriated; and, attempt to negotiate a settlement. The hearing is informal and is not binding. Should no settlement be reached, either party may serve notice for arbitration as if the proceedings had not occurred.

Procedures for arbitration before the Ontario Municipal Board are binding between the parties unless appeal of the Board's decision is taken to Divisional Court. Where a hearing is to be convened, both parties must submit property appraisals to the other party fifteen days in advance of the hearing. Either party may call three witnesses before the Board; evidence before the Board forms part of a formal record; and, the Board must issue written reasons for its decision. In the event that an award of the Board exceeds 85 percent of the offer of compensation, the costs of the proceedings are to be paid by Ontario Hydro, where less, the costs may be apportioned.

The method of compensation determination is set out under the Exp Act. Items for which compensation must be paid are itemized as considerations for the statutory authority. Subsequent determinations, by the Board of

Negotiation or the Ontario Municipal Board, are guided by those considerations. Essentially, items for consideration may be categorized under either single ownership and occupancy, including tenancy and business considerations or injurious affection.

For the first category, when considering owner compensation, the market value of the land predominates. Added to that may be an allowance for inconvenience, merchantable timber, improvements and relocation costs including legal and survey costs incurred during relocation. For tenants, a portion of the previous cost may be allowed depending on the circumstance of the lease, which may be written, verbal or understood. For businesses, business losses determined after six months of activity in a relocated area, may be compensated. In addition, business "good-will" is compensable.

Injurious affection, the second compensation category, may be claimed up to one year after the damage was sustained. By definition of section 1(e) of the Exp Act:

- (e) "injurious affection" means,
 - (i) where a statutory authority acquires part of the land of an owner,

- (A) the reduction in market value thereby caused to the remaining land of the owner by the acquisition or by the construction of the works thereon or by the use of the works thereon or any combination of them, and
 - (B) such personal and business damages, resulting from the construction or use, or both, of the works as the statutory authority would be liable for if the construction or use were not under the authority of a statute,
- ii) where the statutory authority does not acquire part of the land of an owner,
- (A) such reduction in the market value of the land of the owner, and
 - (B) such personal and business damages, resulting from the construction and not the use of the works by the statutory authority, as the statutory authority would be liable for if the construction were not under the authority of a statute,
- and for the purposes of this clause, part of the lands of an owner shall be deemed to have been acquired where the owner from whom lands are acquired retains lands contiguous to those acquired or retains lands of which the use is enhanced by unified ownership with those acquired;

6.4.2 Pipeline Corridors

The acquisition of necessary land rights for hydrocarbon transmission corridors may be accomplished by negotiated agreements between the company and owner or by expropriation authorized by the OEB. The latter procedure involves the OEB authorizing the taking of the lands but does not establish the level of compensation, compensatory

items or levels of damage compensation. Those values are determined pursuant to the procedures of the Exp Act.

Negotiated agreements may be entered into before or following approval of Leave to Construct. Leave to Construct, however, cannot be granted unless the proponent has satisfied the Board that a standard agreement document has or will be presented to affected owners. Although a standard agreement was not available to the author, it is assumed that compensatory items are established by that document. If they are not, as is evidenced in later discussion, significant confusion may arise for an owner in distinguishing compensation for acquisition and compensation for damages.

The authority to expropriate land is granted to a proponent by the OEB. The application to expropriate, however, cannot be made prior to issuance of a Leave to Construct Order. Upon application, the Board is required to establish a time and place for a hearing, which hearing cannot be set less than fourteen days from the date of application. It is the responsibility of the proponent to provide notice, of the hearing in such manner and to such persons as the Board directs. Following the hearing, if the Board is of the view that the expropriation is in the public interest, it may make an order authorizing the applicant to expropriate the land.

Section 50 of the OEB Act states:

"50. Where compensation for damages is provided for in this Part and is not agreed upon, the procedures set out in clauses 26 (a) and (b) of the Expropriations Act apply to the determination of such compensation, and such compensation shall be determined under section 27 of that Act or by the Land Compensation Board continued under section 28 of that Act. R.S.O. 1970, c.1 312, s. 42."

No reference is given to the determination of compensation for the acquired land rights and subsequent references to compensation (sections 48(10), 52 and 53) refer only to compensation for damages. The author's view of this apparent omission is that "damage" is equated to "injurious affection" as defined by the Exp Act. In that way, the value of acquisition of property rights (i.e. easement), would be determined by the reduction of market value resulting from the loss of those land rights by the expropriation.

The procedure for compensation, pursuant to 26(a) and (b) of the Exp Act has been described previously with respect to electrical transmission corridors. Sections 26(a) and (b) reference the procedures of negotiation and arbitration.

As with electrical transmission corridors, no entry fee is payable by the proponent and, hence, no determination procedure for that fee is set-out in the legislations. Pursuant to section 48(10) entry to lands for survey and examination is allowed following the granting of a Leave to Construct Order. No entry for construction purposes is allowed, pursuant to the Exp Act until the passage of the date of possession.

Synopsis

The agencies and legislation governing transmission corridor development in Ontario are complex in comparison to the previous structures. For pipelines, the general governing statute is the Ontario Energy Board Act. That Act is administered by the Ontario Energy Board (OEB). The planning for electric transmission corridors rests with Ontario Hydro as established by the Power Corporation Act. Authorization to proceed with facility location planning rests with the Lieutenant Governor-in-Council. Actual route determination and approval may rest with the Minister, the Environmental Assessment Board (established under the Environmental Assessment Act) or with a Consolidated Board formed from the Environmental Assessment Board and the Ontario Municipal Board as determined by the required submission of an environmental assessment.

An interesting point with the Ontario system is that even with its large population and private parcel ownership patterns, it has not adopted land acquisition legislation more reflective of Alberta's procedures, or even those of the NEB. Instead, its procedures remain similar to those of British Columbia with the exception that pipelines and electric transmission lines are administered by two agencies and that both agencies, effectively, require public hearings for route determination. No secondary, detailed-route procedures follow and expropriation proceedings deal only with compensation matters. Table 8.1, in Chapter 8, graphically sets out this information.

CHAPTER 7

CASE STUDY

(Ontario Hydro)

7.1 Introduction

In the previous four chapters, the author has spent considerable time in documenting and evaluating route approval procedures between a federal regulatory body and selected provincial regulatory agencies. The focus in those chapters, as is the main focus of this thesis, is the processes available to affected individuals. However, as stated in section 1.5, it seems appropriate that at least one case study be reviewed.

The selected case involves the Ontario Hydro Eastern Ontario Transmission Project and more specifically that area which affects the Regional Municipality of Ottawa-Carleton (RMOC). This project was selected for several reasons. First, it is current in nature and geographically specific to the Ottawa Valley. Second, this is a project that the author has monitored over the years, attending local public meetings and portions of the route

stages hearings. As such, I considered myself as an "interested party" and not part of the regulatory review administration.

7.2 Ontario Hydro Eastern Ontario Transmission System Expansion - Western Section

7.2.1 Ontario Hydro Notification/Compensation - Regional Municipality of Ottawa-Carleton

Order-in-Council 2065/78, approved by the Lieutenant Governor of the Province of Ontario on 12 July 1978, required the Ontario Minister of Energy to report on the energy load growth for the geographic area of Ontario, east of the Lennox Generating Station. That report was due by 30 June 1979.

This started the planning, review, route study, public hearings, final decision, property acquisition design, and, finally, construction of the Ontario Hydro twin 500 kV line. The line would run between the Lennox Generating Station on Lake Ontario and the Hawthorne Transformer Station immediately east of the City of Ottawa.

While the province (i.e. Ontario Hydro) commenced its studies prior to 1979, members of the public affected

by the Western Section, in the RMOC, were not contacted by Ontario Hydro until October 26, 1983 (Ontario Hydro, October 26, 1983: 1). By that time Ontario Hydro had completed its report "Eastern Ontario, Plan Stage, Environmental Assessment, July 1980" and the Consolidated Hearing Board had issued its decision on 6 August 1982 to approve the "Plan Stage".

Ontario Hydro's notice to RMOC affected landowners indicated that the route stage had commenced in October 1982 (Ontario Hydro, October 26, 1983: 1). By 4 November 1985 the Consolidated Board approved the specific location of the transmission route. The specific route approved by the Board "fine-tunes" the "Approved Plan (M3)*" which was approved back in 1982 (Figure 7.1).

In short, the public wasn't involved in any detailed or systematic way with either the Plan Stage or Route Stage until it came down to "fine-tuning" the

* Plan (M3) is the approved plan of the five alternative transmission plans reviewed at the Plan Stage. It includes:

2 single circuit 500 kV lines Lennox to Cataraqui to Merivale; 1 single circuit 500 kV line Hawthorne to St. Lawrence; and 2 multi-circuit 500/230 kV lines Merivale to Hawthorne

Approval of the plan stage includes approval of the general study area for route selection at the Route Stage.

**Figure 7.1
The Approved Plan (M3)
Eastern Ontario Transmission Facilities**

151a

The approved plan (2000 stage) illustrated above comprises the following

A: STATIONS

1. Lennox GS - 500 kV switching facilities
2. Hawthorne TS - A 500/230 kV switching and transformer station in the Ottawa area at the existing Hawthorne TS site
3. Merivale TS - Provision for a 500/230 kV switching and transformer station in the Ottawa area at the existing Merivale TS site
4. St. Lawrence TS - A 500/230 kV switching and transformer station in the Cornwall area at the existing St. Lawrence TS site
5. Other - An extension of the Ontario Hydro microwave communication system linking stations in eastern Ontario

B: LINES

1. Lennox GS to Merivale TS - Two single-circuit 500 kV lines
2. Merivale TS to Hawthorne - The minimum requirements for this link are:
 Two 500 kV circuits on separate tower lines
 Four 230 kV circuits
 Except for some short sections, these requirements can be accommodated on the existing right of way by removing the existing circuits and installing two three-circuit tower lines, each with one 500 kV circuit and two 230 kV circuits. If in the route stage it is determined that the right of way can be widened, other arrangements may be considered.
3. Hawthorne TS to St. Lawrence TS - One single-circuit 500 kV line

Source: Ontario Hydro

approved Plan (M3). One must question the fairness of such a process, since few members of the public ever had an opportunity to question Ontario Hydro experts on such matters as: load reduction, alternative sources (Quebec, co-generation, Chats Falls*, etc.), or why Plan (M3) was selected.

A corollary observation is the question of fairness due to the total length of time and complexity of the studies. This observation is not a criticism of Ontario Hydro per se, but of procedures which must be followed under the Environmental Assessment Act of the Province of Ontario. Not only were information documents numerous and complex (questionably beyond the comprehension of some of the people affected), the number and length of hearings made it virtually impossible for anyone holding down a normal job, other than those rich enough to send a lawyer (\$200/day) to attend those public hearings in a meaningful way. By "meaningful", I mean to listen to both sides of the technical arguments, not just to wait your turn, present your position on the proposal, and leave.

* Chats Falls was a proposed nuclear generating station to be located in West Carleton in the Fitzroy Harbour area of Ontario.

Aside from the two general observations above, the author questions the fairness of determining the fair market value of land by Ontario Hydro. Most, if not all, appraisal reports attempt to determine the "highest and best use" of a property. This concept ignores the actual use of the property and instead concentrates on what the market value would be at the time of expropriation. It also assumes that the vendor is an informed, prudent person, that the purchaser is an informed prudent, person, and that both can agree on the present worth of the property in anticipation of the highest and best use. This highest and best use is that which would:

- (i) be permitted by those levels of government with land use planning approval authority; and
- (ii) have a market demand for said use(s).

Given the above, it is disconcerting to note that, according to Ontario Hydro officials, approximately 80 percent of their "first offers" are accepted by vendors (personal communication - Bill Kasher, Ontario Hydro). That is, most vendors do not even ask for a second opinion as to what the future value (i.e. highest and best use) of their property might be. It is clear that let the seller beware is in operation. The public as a whole may benefit

through reduced costs of expropriation, and one may argue that nothing could be fairer than "willing buyer/willing seller".

In the author's opinion, a system that would compensate people differently depending upon their sophistication in determining potential land values is inherently unfair.

As an example of the above, Ontario Hydro used as a "comparable sale"* the sale of the W1/2, Lot 8, Concession I, Goulbourn Township, Regional Municipality of Ottawa-Carleton, Ontario for \$371/ha (\$150/ac) (Ontario Hydro, May 15, 1985: 11). The purchaser was Harvey Greer In Trust, and the notation from the Ontario Hydro information sheet was that the purchaser bought the property as a "recreational and holding investment".

There is no mention as to whether or not Newton Douglas, the vendor knew that as soon as the new Official Plan of the Regional Municipality of Ottawa-Carleton was adopted on May 30, 1988 he would have had a reasonably good chance of getting a country lot subdivision approved (Ontario Hydro, May 15, 1985: 11).

* Comparable Sale - a land transaction used as an example of a "willing buyer/willing seller" situation.

3 of/de 3

MicroD

Mr. Greer knew this; he is a land developer in the Stittsville, Ontario area. A prudent informed vendor might have gotten approximately \$2000/ac. based on a recent sale in North Gower, Ontario (Heggart Subdivision - 19 lots draft approved, sold for \$100,000) (personal communication - Roger Hunter, RMOC).

It would be inherently unfair for Ontario Hydro to use such a comparable sale, given that the vendor was obviously not well informed. Even if Ontario Hydro was also not aware of the proposed change in the Ottawa - Carleton Official Plan the facts are that this proposed change is common knowledge at the Regional and Township planning offices and a simple phone call would confirm this fact. I will not question Ontario Hydro's procedure in this matter, but note that it is not an uncommon practice for comparable sales to include sales by ill-informed or distressed (have to sell at all costs) vendors.

In order to complete the writer's observations on the fairness of the expropriation process the following case study is presented.

7.2.2 Allan and Carolyn Sauve Subdivision (Case Study)

Mr. and Mrs. Sauve submitted a draft plan of subdivision to the RMOC on 27 April 1984; the owners

originally intended to develop 25 lots intended for country lot residential development (Regional Municipality of Ottawa-Carleton, May 7, 1986: 1).

If Ontario Hydro had not proposed to cross the site with their 500 kV line, the subdivision would have been approved shortly after 14 March 1985 (the date Regional Planning Committee first considered the subdivision and concurrently approved local Official Plan Amendment 36 which allowed for country lot development to take place) (Regional Municipality of Ottawa-Carleton, April 11, 1985: 81-90). Instead, the subdivision approval was deferred until May 6, 1986, after the Consolidated Board had approved a revised hydro route which abutted the northern boundary of the subdivision.

Aside from being delayed for a two year period, the process was unfair to the Sauves in other respects. First, the RMOC introduced Regional Development Charges* in 1985; since the delay in approving the Sauve subdivision was a result of 3rd party action, the subdivision was not exempted from those charges.

* Regional Development Charges - By-Law 193 of 1985 states that Regional Council may levy charges on new development. The funds raised by those charges could be utilized for such items as roadways, transit, sewer, water, and health care facilities anywhere within the municipal boundary of the RMOC.

Second, as a result of considerable bad publicity concerning the health effects of high-voltage hydro transmission lines, the Sauve's are experiencing increasing difficulty in selling the lots in their approved and registered subdivision, particularly those closest to the Hydro towers (personal communication - Allan Sauve (owner) and Roger Hunter (RMOC)).

The Sauve's could claim compensation through the "injurious affection" provisions of the Expropriation Act (as could the landowners in Bridlewood*), if they were aware of their legal rights. Since there now is no "taking", it is doubtful if Ontario Hydro would be advising the Sauve's of their right to compensation (there is no legal obligation to do so).

The only way the Sauve's would receive compensation is if they went directly to Ontario Hydro (in which case Ontario Hydro should advise them of their rights) or to their own lawyer. One questions the fairness of a process which leaves it up to individual property owners to determine the legal compensation they are

* Bridlewood - A small subdivision in the City of Kanata west of Ottawa, Ontario.

entitled to under the legislation. However, others may argue that public authorities have no obligation to advise the public of their legal rights (i.e. ignorance of the law is no excuse).

PART V

CHAPTER 8

CONCLUSIONS

8.1 Introduction

The selection of an energy transmission corridor, through procedures determined by legislation and implemented by one or more public agencies, may be viewed, intrinsically, as a portion of an expropriation procedure. As with the ultimate compensation, then "the important point is that it shall be fair, to both sides, and that justice shall not only be done, but manifestly seen to be done (Bryant 1972: 268).

To restate the purpose of this paper, does federal legislation for energy transmission corridor development, with respect to the fair and equitable treatment of the proponent and individual landowner, offer similar or enhanced procedures to those statutory requirements which now exist in major-energy producing and consumer provinces?

Viewed logically, this would imply, for fairness to Canadian landowners, that all route approval procedures,

in Canada, either provincial or federal, should be similar if not identical. One arrives at this conclusion on the premise that:

- (i) federal responsibility regarding land resource management and certain approvals were transferred to the provinces; and
- (ii) both the federal and provincial levels of government exercise jurisdiction over certain pipelines and transmission lines.

Therefore, for justice to be done and to be seen to be done, the basic approval model - route approval to the detail of expropriation - should be set at the federal level and adopted at the provincial level. When considering previous discussions concerning energy source and demand (especially U.S. demand), all Canadians are seen to benefit and, hence, all Canadians should have access to a system of approvals which best fit the previous requirements; so, too, should the proponents.

In the previous four chapters, considerable time was devoted to evaluating route approval procedures of a federal regulatory body and selected provincial regulatory agencies. It is quite apparent from that review that the various procedures are complex and, in most cases, somewhat different. To facilitate comparison of the procedures, Table 8.1, "Summary of Federal/Provincial Procedures", has

Table 8.1
Summary of Federal/Provincial Procedures
(Public/Municipal/Provincial Input)

160a

Stages	Procedures	Federal NEB	Provincial					
			British Columbia		Alberta		Ontario	
			Pipeline	Hydro	Pipeline	Hydro	Pipeline	Hydro
Project Certification	Regional/Municipal Contact	X	X	X	X	X	X	X
	Public Meetings	X	X	X	X	X	X	X
	Prehearing Conferences	X	●	●	●	○	●	○
	Minimum Req. for Public Hearing	●	X	X	X	X	●	X
	or Ministerial Discretion	○	●	●	●	●	○	●
	Hearing Notification	●	●	●	●	●	●	●
	Local Hearing (Corridor Selection)	X			●	●		X
	Cost Recoverable	○	○	○	●	●	○	○
Detailed Routing	Separate Approval Process	●	○	○	○	○	○	●
	or Part of Certificate	○	●	●	●	●	○	○
	Notification - Personal Service	●	○	○	○	○	○	○
	- Publication	●	○	○	○	○	○	●
	Restricted to Owners	○	○	○	○	○	○	○
	or Open to Interested Parties	●	○	○	○	○	○	●
	Local Public Hearings	●	○	○	○	○	○	●
	Cost Recoverable	●	○	○	○	○	○	○
Land Acquisition	Mutual Negotiations	●	●	●	●	●	●	●
	Notification by Personal Service	●	○	○			●	●
	or Publication	○	○	○			○	○
	Includes Standard Form*	●	○				●	●
	Includes Statement of Owners Rights	●	○		●	●		●
	Re Compensation Determination	●	○		●	●	○	●
	Detailed Route Approval	●	○	○	○	○	○	○
	Restricted to Single Line	●						
Expropriation (Right of Entry)	Hearing Requirement	○	○	○	○	○	●	●
	Basis of Objection - Method	●	○	○	●	●		
	- Timing	●	○	○	●	●		
	- Compensation	●	●	●	○	○		
	Conditional Approval	●	○	○				
	Expropriation by Standard Provisions	○	●	●	○	○	●	●
	Federal Process	○	○	○	○	○	○	○
	Allowed when Compensation Determined	○	●	○	○	○		
Compensation	Open to Affected Owner	●	●	●	●	●	●	●
	Open to Adjacent Owners	●	○	○	○			●
	Lump Sum / Periodic Payment Option	●	○	○	○	○	○	○
	5 Year Reassessment (periodic)	●	○	○	○	○	○	○
	Negotiation / Arbitration Option	●	●	●	○	○	●	●
	Appeal Procedure	●	●	●	●	●	●	●

● Available ○ Not Available
X Discretionary Not Assessable

Source
National Energy Board
W J Ostafichuk
January 1988

been prepared. That summary evaluates the five levels under the categories of:

- (i) project certification,
- (ii) detailed routing,
- (iii) land acquisition,
- (iv) expropriation, and
- (v) compensation.

8.2 Summary of Agencies and Legislation

8.2.1 Federal

At the federal government level, major energy corridor development for oil, gas and hydrocarbon products, or electric transmission, interprovincially or internationally, is administered under a single statute and agency, the National Energy Board. That Board is established at "arms-length" from government control. The statute and its regulations govern the authorization of a project, a Certificate of Public Convenience and Necessity, through to the acquisition of the necessary lands to implementation of construction, but excluding compensation. The onus for the provision of information to interested parties respecting the application, while detailed in the regulations, rests with the proponent.

That information forms part of the public record and is subject to scrutiny in two required public hearings: the certificate hearing (general route) and the detailed route hearing.

8.2.2 British Columbia

In the Province of British Columbia, major transmission corridor development approval is administered through the Utilities Commission Act under the auspices of the Energy Project Coordinating Committee (EPCC), the Utilities Commission and, ultimately, the Minister of Energy. None of those agents are at "arms length" from the government. The EPCC directs the information to be provided in an application and advises the Minister on the appropriateness of a review by the Utilities Commission. The Minister, in conjunction with the Minister of Environment, may exempt an application from the UC Act; require the Utilities Commission to review the application under specified Terms of Reference which may require a public hearing; or, may refer the application to the Utilities Commission for review and recommendation to Cabinet, which process requires a public hearing. Unless a public hearing is required by legislation, minimal public, and landowner notification is required. British Columbia relies on the proponent providing a non-statutory liaison

program which may occur prior to, during, or following government approval.

Project implementation, the acquisition of land to permit construction, is controlled through the Utilities Commission. With the issuance of an Energy Project Certificate, a Certificate of Public Convenience and Necessity, or an Exemption Order, the transmission corridor route is determined. Those approvals allow acquisition by mutual agreement between the proponent and landowners. When expropriations are necessary, three other statutes are brought into play. For electrical transmission routes, expropriation procedures are embodied in the British Columbia Hydro and Power Authority Act. For pipeline routes, the Pipelines Act governs the expropriation through the implementation of provisions of the provincial Railway Act. Actual expropriation procedures in those instances relate not to land requirements but to compensation.

8.2.3 Alberta

As one of the models utilized in developing the National Energy Board, the agencies and the legislative procedure established in Alberta are similar to the NEB. Applications are administered directly by the Alberta Energy Resources Conservation Board (ERCB) even though

separate legislation exists for pipeline and electric transmission facilities. The agency, however, is not at "arms length" from government. Referral of applications to the Minister of Energy, Natural Resources and Public Lands and Wildlife is mandatory and those Ministers may require incorporation of specific conditions by the ERCB.

Respecting information requirements for an application, the ERCB sets out only minimal regulations and these concern the facilities design. Through a non-statutory procedure, the ERCB promotes detailed resource data collection. That is done by the promotion of affected owner, municipal and provincial contacts. The ERCB is required to convene a public hearing but does have discretion to dispense if no objections to the proposal are submitted. Any decision of the Board vests in the proponent the right to the lands. However, actual right of entry and compensation determination fall to the Alberta Surface Rights Board.

8.2.4 Ontario

The agencies and legislation governing transmission corridor development in Ontario are complex in comparison to the previous structures. For pipelines, the general governing statute is the Ontario Energy Board Act. That Act is administered by the Ontario Energy Board (OEB). Although at arms length from the Government, the

OEB, through its Pipeline Coordinating Committee, ensures provincial and municipal pre-planning contact by a proponent. With respect to approval of a project, the OEB must convene a public hearing, and following, has the power to approve the project and to issue expropriation and right-of-entry orders. Compensation determination falls to procedures under the Expropriations Act.

The planning for electric transmission corridors rests with Ontario Hydro as established by the Power Corporation Act. Authorization, to proceed with facility location planning rests with the Lieutenant Governor in Council. Actual route determination and approval may rest with the Minister, the Environmental Assessment Board (established under the Environmental Assessment Act), or with a Consolidated Board formed from the Environmental Assessment Board and the Ontario Municipal Board, as determined by the required submission of an environmental assessment. The Consolidated Board draws its powers from the enabling statutes of the Boards from which it was created. The nature of the proposal and the implications to other statutes dictates which Board or which Minister will be responsible. The procedure for route approval by the Environmental Assessment Board is tied directly to the provincial government. The Minister, in conjunction with

Cabinet, has authority to accept, vary, or reject an Environmental Assessment Board decision. In addition, approval of route selection through the Environmental Assessment Board is discretionary, subject to receipt of objections by the Minister. Notification of a proposal is prescribed with the submission of an environmental assessment and, approval of that assessment determines route location. Only the determination of compensation, through the Expropriation Act, is excluded from Ministerial or Board consideration.

Criteria/Analysis

For any corridor route approval system to be fair, to be indicative of justice being done and to manifest itself as being done, certain basic components are required. Those components are essential when the approval system purports to be in the public interest either at the provincial or national level. In order to protect an individual landowner's rights, it is the author's view that the approval system should contain:

- (i) an independent decision making tribunal whose decision cannot be altered by outside influence;
- (ii) a prescribed approval procedure which incorporates public review of significant projects proposed for the public benefit and which encompasses all facets of the project requirements; and

- (iii) a pre-determined set of information requirements, and evaluation procedures which are free of direct public agency influence or manipulation.

Bearing the first criterion in mind, it is evident that only one agency of those presented, the National Energy Board, has these pre-requisites. The Board's decision is subject to Governor in Council's review, which review will result in either an approval or rejection. No modification to the report is permitted and no alteration of the approval and its conditions is allowed. Unlike the Board, the systems of British Columbia, Alberta and Ontario, each allow for variations/alternatives of an independent, single-agency review. The Ministers in British Columbia and Ontario have some discretion in referring an application to their respective independent tribunals. Also, each of the three provinces allows for variations to the independent's tribunal's decision. The variation in British Columbia may be accomplished through restricted terms of reference; in Alberta, through the imposition of provincially required conditions; and, in Ontario, through direct variance of conditions.

The second criterion, a prescribed approval procedure involving public review, is met, essentially, only by the federal level. Discounting the ministerial influences discussed previously which may allow the

imposition of provincial conditions without public review, the province of Alberta comes closest to meeting this criterion. In that province pipeline and electric transmission corridors fall under the same approval procedures and include all facets of the proposal, except compensation. In British Columbia, as in Ontario, pipeline and electric transmission corridor development is split. The British Columbia procedure does not incorporate actual land requirement review. That component is governed under the separate statutes of the Pipelines Act and the B.C. HPA Act. In Ontario, two separate agencies are established: the Ontario Energy Board, to review pipelines, and the Environmental Assessment Board/Consolidated Board to review electric transmission lines. With those agencies, two separate procedures are utilized for reviewing project proposals. The OEB reviews the entire project up to the taking of specific lands.

The Environmental Assessment Board, however, controls a project only to approval to proceed. The actual acquisition of land is instituted under expropriation procedures set out under the Power Corporations Act.

The final criterion, pre-established information requirements free of public agency manipulation, is, in part, covered by ministerial discretion. The major thrust

of this criterion, however, is directed to the "fair" component: all parties should know what is required, both the public and the proponent. The basic premise in question is whether the onus is on the applicant to support a proposal or whether the onus is on the public to illustrate why a proposal should not proceed. The author's view is the former, as coordinated reaction is difficult, at best, at the public level.

Under the NEB Act and its regulations, the information requirements and procedures are similar and equally detailed for pipelines and transmission lines. The proponent and the public are both provided with a detailed listing of what may be considered and, hence, what may be subject to public hearing review. The detracting feature of the federal legislation, however, rests with electric transmission facilities. Here the Board has chosen to consider only the export component (i.e., from the substation to the U.S. border) of a transmission line. In situations such as the James Bay Project or the Limestone Project, the largest portion of the facility to be used for international export is left under provincial control. Public participation, either in support or opposition is severely cramped in a dual approval process, which may be self-confirming, thereby, leaving the approval system open to criticisms of fairness and, certainly, of justice and

the manifestation of justice being done. The criticism, at the federal approval stage, is that provincial route approvals for the project are normally already in place for the entire line (including that portion being reviewed by the NEB). Landowners, entering the federal review process, do so with the apprehension that there is little they can do to alter the proposed route location.

Of the three provinces examined, only Ontario, and only with respect to electric transmission corridors, utilizes a system which has the appearance of fairness. The requirements to be addressed by an applicant are specific and all encompassing. That legislation clearly outlines what an application should contain and places the onus for information selection on the proponent. Failure to address certain items may be identified provincially, prior to acceptance of the Environmental Assessment, and certainly may be addressed at the hearings, which are public. Both of those can result in project delay. The current "Bridlewood" dilemma of Ontario Hydro is a prime example (Ottawa Citizen, 1985: C2). The procedures of the OEB, on the other hand, are imprecise in the eyes of the reader and seem to assume that provincial representatives offer sufficient public interest protection. The public, generally, has no ready reference into the information

requirements that should be supplied by a proponent and, hence, has no references on which to address criticisms of the proposal.

In British Columbia, the fact that a steering committee directs an applicant in the preparation of its proposal opens the question of provincial bias at the expense of the resident and affected population. Even though the requirements for an application are specified in Regulation 388/80, the detail could be pre-determined. In that way some onus may be relieved from the applicant and imposed on the public, considerably reducing fairness and putting in question the manifestation of justice.

Alberta is unusual in meeting the fairness test concerning pre-established information requirements. A plethora of information documents is available to the applicant and individual property owner, yet minimum information requirements are dictated directly by statute. Enhancing the published material is Alberta's "Rite" telephone system. While the author views these procedures as a benefit to the public interest, it is believed by the author that the system would tend to limit cohesive community objection to a proposal as the emphasis is on proponent to individual landowner relations.

8.3 Route Approval Procedures and Notification

8.3.1 Federal

At the federal level, the National Energy Board must hold a public hearing prior to approving an application for a major transmission facility development and the required general route. A second hearing must be convened in the local area when objection is received. In both instances general public notification is required. For the general route, newspaper publication is required to announce the proposal, the hearing - its time and place, and the process for intervention. For the detailed route, in conjunction with the submission of plans, profiles and books of reference to the Board, a proponent must provide general notice in local newspapers and personal service to directly affected owners.

8.3.2 British Columbia

In British Columbia, a project can receive approval without public notification. The procedure for such notification, although promoted to occur in conjunction with the formal application, need only be identified as proposed in the formal application. Affected agency notification (municipal-provincial-federal) is

deemed to occur as a result of the proponent identifying, in the application, requisite approvals necessary to proceed. The only specific forum for a public hearing results with referral of the application to the Utilities Commission. How that agency solicits possible interventions appears to be through newspaper publication only. From the approval of the general project, a proponent may proceed directly to expropriation - without a detailed route determination. For pipelines, expropriation commences with plans, profiles and book of reference filing and subsequent personal service to affected owners of expropriation procedures. For electric transmission facilities, the filing of a plan in the registry offices gives the requisite lands to the British Columbia Hydroelectric Power Authority. That registration is considered general notice to the public.

8.3.3 Alberta

In the Province of Alberta, the emphasis (non-statutory) is on early public notice of a project. Proponents are encouraged to obtain individual landowner approvals for a transmission route prior to applying for a permit. Failure to do so would initiate a public hearing.

Once the proponent has determined the route, the application is forwarded to the Energy Resources Conservation Board which, in turn, circulates the document to provincial agencies and the approval will be forthcoming with conditions, or without. Where necessary lands have not been secured and where the proponent cannot justify its route, the ERCB will publish notification of the application and, if there are objections, will proceed to a hearing. Approval of the application, which is forwarded to all parties of the proceeding, approves the detailed route. An important feature of the Alberta process is that costs for hearing participation may be awarded to affected owners and interested parties.

8.3.4 Ontario

The Province of Ontario has separate approval procedures for pipelines and electric transmission corridors. Route approval through the Environmental Assessment procedure necessitates notification of the submission and acceptance of the Environmental Assessment document and, if a hearing is required, may call for a further notification of the hearing. Both notices are by publication and the latter notice and hearing results in actual detailed route approval. With the OEB, informal notification is given to provincial agencies through

pre-application submission and formal notice is given, through publication, of the application acceptance and the future public hearing. Approval of the application by the OEB authorizes the detailed route. The only other notification required for electric transmission facilities, as with pipelines, is initiated with expropriation procedures. For electric transmission facilities, that notification occurs with the registration of parcel plans and the issuance of Notice of Possession; and, for pipelines, through notification by the proponent to affected owners concerning an expropriation hearing.

Criteria/Analysis

What is fair, invokes justice and has the appearance of manifesting justice, with respect to route approval and notification, is difficult to determine when considering major facilities which could be 30 miles or 300 miles in length. The two questions that come to mind are whether it is fair and equitable to expect those persons who are affected by one of a series of alternative corridors to appear at a hearing and whether it is reasonable for both a general corridor hearing and a detailed hearing to be conducted. In the latter situation a related question arises; is it fair and equitable to assume that an approving tribunal would entertain, in one

hearing, the difficulties of locating certain transmission structures on individual properties for more than one alternative location? Fairness would dictate a response of "yes"; logic and experience demands the response of "no". Following the logical thought, then, suggests that a two-phased route determination procedure should be mandatory for any large scale transmission project, and that process is offered only by the National Energy Board.

The alternate approach, that of assuming a priority ranking of approvals from the province to the individual owners, is manifested by British Columbia and Ontario. That process assumes the recognition of provincial priorities through pre-circulation of a project. While being meritorious in application, it assumes that provincial agencies should be protecting the public interest. That process fails, however, to give an appearance of justice to those individuals ultimately affected.

Ontario Hydro, as discussed, has attempted an adaptation of the priority interest approach by involving "regional interest groups" to formulate alternate corridors. Even that approach, though more clearly reflecting a local perspective, is open for discussion as to its representativeness of the individual interest and of its fairness and equity to those affected.

It is the author's view that the Province of Alberta most closely approaches the equivalent of a two-phased route determination procedure. By requiring advance owner notification of a proposed route, the process allows for those who truly object to the proposal to appear before the tribunal and raise their specific concerns, and be compensated for their appearance. The system, however, requires the proponent to prejudge the corridor selection process of the tribunal. The author questions whether the corridor selected by the proponent has the least environmental implications to the province or the least resistance from affected owners.

8.4 Land Acquisition Procedures

Transmission facilities are a hybrid of private investment and of public utility status which are not readily planned for nor accommodated within an existing infrastructure.

Five land related factors are common to transmission facilities, namely:

- (i) they are potentially hazardous;
- (ii) they are unsightly;
- (iii) they require restrictive conditions along their corridors;

- (iv) they are located on easements which take only some of the rights out of the "bundle of rights" normally associated with fee-simple ownership; and
- (v) they are extremely expensive to relocate or modify, once established.

Those five factors are not all readily considered by affected owners required to sell certain of their property rights. Nor is there a guarantee that the individuals securing those rights will explain those implications even though common real estate practice dictates full disclosure.

Ensuring that all affected owners, and even those owners who anticipate that their lands may be adversely affected, are aware of the implications of corridor development and are fairly and equitably treated has been and remains a problem for the legislators. Numerous questions/issues exist. Who should receive compensation? To what extent should they be compensated? In what manner should they be compensated (lump sum payment or periodic payment)? Should compensation be paid for increases in land value? And should compensation be paid for changes in the energy being transmitted, such as an oil pipeline conversion to high vapour gas, or a transmission upgrade such as a twinning of pipelines or a change from a 130 kV to 500 kV powerline?

8.4.1 Federal

At the federal level, the March 1983 revisions to the National Energy Board Act established not only the two phased route determination procedure, but also substantial changes to the methods of land acquisition.

The incorporation of that second stage procedure represents the first step in an expropriation procedure under the Act. At this stage, affected owners are required to receive personal notice of the detailed route hearing and adjacent or interested owners receive notice through local newspaper publication. All persons may attend and participate in the final route determination at no cost to themselves, as any reasonable costs incurred may be payable by the proponent. Should the route not be approved, a second detailed hearing and notices would be issued to guarantee that all affected and adjacent owners also had a fair opportunity to present their views on any new route location.

With respect to land acquisition, an owner may be approached by a proponent at any time; however, that owner must be served a Land Acquisition Notice which references the detailed route procedure. In addition, the content of the agreement is specified by the Act and requires the

presentation of an option for lump sum or periodic payments and a restriction to one transmission line per agreement. With periodic payments, a five year review is required. Other significant changes to the Act were: the establishment of a tribunal, separate from the courts and the Board, to determine compensation; an allowance for adjacent owners to seek compensation through that tribunal; and the provision for right of entry by the company following detailed route approval and where compensation agreement had not been concluded.

8.4.2 British Columbia

In British Columbia, no second stage route approval exists and, as has been described, no guarantee for landowner participation in the determination of the proposed route exists. A proponent holding a Certificate or Order, if unsuccessful in negotiating a mutual agreement with a landowner, may proceed to expropriation procedures established under the B.C. HPA Act or the Pipelines Act (Railway Act). Under the B.C. HPA Act, the registration of a plan in the registry office vests in the proponent the title to land. The issue of compensation would then be determined by negotiation between the owner and proponent within a specified time period or, failing, that by the decision of an evaluator or through the County Court or Court of Appeal.

For pipelines, with the approval of the plans, profiles and books of reference, an immediate right to an 18 metre right-of-way is conferred on the proponent. Registration of the PPBoR's is deemed general notice. Personal service of expropriation is required on affected owners. The expropriation procedure deals solely with compensation and may be determined through a specified negotiation procedure, through one or more evaluators or through the County Court. The right to enter the land is automatic with payment of compensation or it may be gained by Warrant prior to compensation payment.

8.4.3 Alberta

The Province of Alberta utilizes a one stage hearing procedure for pipeline and electric transmission line approvals. It guarantees affected owner participation, however, by requiring the proponent to initiate land acquisition procedures prior to consideration by the ERCB of a permit. A potentially affected landowner is not required to negotiate, may avail himself of all pertinent information respecting the route determination and his rights through the toll free "RITE" telephone information service, and may present his concerns respecting the route proposed to the ERCB in a public hearing. That public hearing is cost recoverable by the

affected owner from the proponent. With the issuance of a permit, the resolution of routing matters, the responsibility for compensation determination is undertaken by the Alberta Surface Rights Board. That Board can determine, through hearing procedures, disputes relating to compensation which may include lump sum or annual payment with five year review, and right of entry disputes or applications where land acquisition agreements cannot be reached. The hearing procedure for right of entry allows an owner to present his views on access road requirements, disruptions etc. and also requires prepayment of 80% of market value prior to the exercise of entry by the proponent.

8.4.4 Ontario

It is surprising that Ontario, with its large population and private parcel ownership patterns, has not adopted land acquisition legislation more reflective of Alberta's procedures, or even those of the NEB. Instead, its procedures remain similar to those of British Columbia, with the exception that pipelines and electric transmission lines are administered by two agencies and that both agencies, effectively, require public hearings for route determination. No secondary, detailed-route procedures follow and expropriation proceedings deal only with compensation matters.

One significant difference does exist in Ontario and that difference is found in the procedures for acquisition implemented by Ontario Hydro. Whether this is intended to reduce the need for legislation or forms part of the corporate citizen image is not clear. The feature of significance is that Ontario Hydro distributes questionnaires to affected owners requesting detailed information on facility location and offers a reasonably comprehensive compensation package for those facility locations. That compensation package is clearly set out in information bulletins and, although the author has not followed an actual expropriation case, appears to go beyond the requirements of the Expropriations Act.

Criteria/Analysis

The key elements to fair and just procedures rests with notification and the potential for landowner participation in the determination of the actual location of facilities and, more specifically, the determination of the location of those facilities on the individual's own property. The NEB and Alberta procedures each offer that opportunity. The distinguishing features between the two are that:

- the NEB procedure for actual route determination follows general route approval, whereas Alberta's procedure for route determination are consolidated to a single hearing;
- the NEB procedure requires two notices related to land acquisition, including a Land Acquisition Notice and a Detailed Route Notice (PPBoR filing), whereas the Alberta procedure relies on presentation of a land acquisition agreement and reliance on the "RITE" information service; and
- the NEB procedure requires a local public hearing, where affected owners and adjacent owner objections may be heard, whereas, in Alberta, the ERCB has discretion in hearing affected owners and is not required to hear the views of adjacent owners.

Based on those differences it seems evident, in terms of fairness to affected landowners, that the NEB procedures are superior to those of Alberta.

Features which exclude British Columbia and Ontario from consideration are twofold. First, the author cannot support as "fair" a system of corridor approval to

expropriation utilized in British Columbia and by the Ontario Energy Board. As noted earlier, in section 3.2.1, that type of corridor approval/expropriation system was in place prior to March 1983 at the NEB. The criticism that necessitated the change, was that the route was not defined in sufficient detail at the certificate approval stage. Even if landowners wanted to become involved, insufficient detail normally wasn't available on the final proposed route and the specific land requirements. It would only be after certification that final surveys would be undertaken. At that stage, if landowner negotiations were unsuccessful, expropriation would be the next step. One must question a system that allows for acquisition of land without adequate public input to the route location or location of above ground structures.

Second, the author does not view as fair and equitable a dual system of approvals for energy corridors, as utilized in Ontario albeit that the energy type is different. This basically refers to the equality of treatment. A particular type of activity should be governed by only one set of rules, or laws - no more, no less - no matter who engages in that activity. And this set of rules should apply equally to everyone. These essentials are part of what is called "the rule of law", our basic unwritten constitutional guarantee of fairness

and equal treatment (Law Reform Commission of Canada, 1975: p. 13).

Third, expropriation procedures for energy corridors should be identical and should offer affected owners identical opportunities and rights in order to be fair and just. In British Columbia, that is not the situation; the Railway Act applies to pipelines and different expropriation procedures are incorporated in the B.C. HPA Act. This third point also refers to the "equality of treatment" as discussed under point two. Equality of treatment is lacking between the present federal (NEB) expropriations and those of the three provinces studied. Therefore, the rights of landowners affected by an expropriation vary according to which law applies and according to who expropriates. One landowner may have the opportunity to object to a decision to expropriate, another may not.

8.5 Ontario Hydro Case Study

In Chapter 7, the author provided some insight into just how an energy transmission project proceeded through a regulatory process. In presenting this case, the author has identified certain problems that can exist even in a well developed regulatory process - that being the process followed by Ontario's Consolidated Hearing Board.

By reviewing the files of the Regional Municipality of Ottawa-Carleton, it was quite apparent that personal landowner notification took place only after plan and route stage approval, during the fine-tuning of approved Plan M3. The important point here is that Ontario Hydro did provide the required public notification through the local newspapers. It also involved local officials and members of the community at large. What it failed to do, however, was to notify those landowners most directly affected by the project - those landowners where the facility would be located and whose lands would be required. The question of fairness of the notification procedure is one that should be reviewed.

A second important point that came from the case study is that just how meaningful is an individual landowner's representation. It is the author's view that to seriously participate in such a complex hearing process, one would be required to have both legal and technical support and be available for all aspects of the route approval. Obviously, without intervenor funding, this is not possible. One should recall that such intervenor funding is made available through the National Energy Board's detailed route hearing process.

The case study presented in Chapter 7 should not be construed as a criticism of Ontario Hydro, or the process that it followed in obtaining approval for its Eastern Ontario Hydro transmission facilities. What it does indicate is that there are weaknesses in the system that one would not find in the federal regulatory system. Those weaknesses, such as notification and compensation, have been addressed in the 1983 amendments to the National Energy Board Act. Landowners would have had more rights if this had have been a federal project. Again, one must question the fairness and equality of treatment a landowner has when he is governed by more than one set of laws.

8.6 Final Synopsis

As part of the prologue, it was shown that there was a discontinuity between resource location and energy consumption, and that the consumption demand would continue to increase. Based on that discontinuity and the foreseeable increases in demand (hence facilities), this study reviewed selected legislation to determine whether that legislation insured "regional interest consideration, in an open public forum, of transmission corridor routing with emphasis on the rights of those individuals who ultimately bear the burden".

Rights were defined as the potential for landowners and other adversely affected parties to participate in route location, above ground structure position determination, and to receive adequate compensation.

The paper has demonstrated that, while each province incorporates certain very positive features in its legislation, no one province appears to be consistent in meeting the requirements of fairness at all stages, in all steps and procedures. Table 8.1 (Summary of Federal/Provincial Procedures) clearly indicates obvious gaps in the various approval stages. Those gaps can be considered as infringements to landowner's rights. Only the federal procedures, through the National Energy Board, consolidates oil and electrical transmission corridors under a single procedure which is, theoretically, free of political influence. Only the National Energy Board utilizes an open-public forum, through a two stage (certificate-detailed route) procedure, although that procedure is approximated by Alberta and Ontario Hydro. Only the National Energy Board Act establishes hearing requirements and the requirements for notices of certificate application review, detailed route review and land acquisition procedures, and compensatory items under a single statute. Again, the Province of Alberta and the procedures of

Ontario Hydro replicate some of those items but they are non-statutory.

This paper does not purport to suggest that the National Energy Board procedures are perfect. As the paper is not based on actual practice, but rather on published legislation, policy, and procedures, it is conceivable that the actual provincial procedures reviewed meet that population's requirements. It is difficult to believe, however, that individually affected landowners in those provinces receive the same considerations as those affected by a federally regulated project. There is, then, an apparent unfairness, injustice, and lack of appearance of justice between the federal and provincial processes.

LEGISLATION/REGULATIONS/GUIDELINES

FEDERAL

Government of Canada, National Energy Board Act, R.S., c. N-6, March 1983.

National Energy Board, Rules of Practice and Procedure (Draft), February 1985.

National Energy Board, Route Approval Procedures, Information Bulletin # 1, September 1983.

National Energy Board, The Public Hearing Process, Information Bulletin # 2, October 1983

National Energy Board, Non-Hearing Procedures, Information Bulletin # 3, November 1983.

National Energy Board, How to Intervene, Information Bulletin # 4, January 1984.

National Energy Board, Protection of the Environment - Pipelines, Information Bulletin # 9, June 1985.

Agency: National Energy Board.

PROVINCIAL**BRITISH COLUMBIA**

Province of British Columbia, Arbitration Act, RS Chapter 18, September 24 1984.

Agency: Ministry of Attorney General.

Province of British Columbia, Utilities Commission Act, SBC Chapter 60, Index Chapter 421.5, 18 March 1983.

Province of British Columbia, Hydro and Power Authority Act, RS Chapter 188, 6 September 1985.

Agency: Ministry of Energy, Mines and Petroleum Resources.

Province of British Columbia, Environmental Management Act, SBC Chapter 14, Index Chapter 110.5

Province of British Columbia, Water Act, RS Chapter 429, 18 March 1983.

Agency: Ministry of Environment.

Province of British Columbia, Forest Act, RS Chapter 140, 3 June 1986.

Agency: Ministry of Forests.

Province of British Columbia, Land Act, RS Chapter 214, 24 September 1984.

Agency: Ministry of Lands, Parks and Housing.

Province of British Columbia, Heritage Act, RS Chapter 165, 24 September 1984.

Agency: Ministry of Provincial Secretary and Government Services.

Province of British Columbia, Railway Act, RS Chapter 354,
24 September 1984.

Province of British Columbia, Pipeline Act, RS Chapter 328,
18 March 1983.

Agency: Ministry of Transportation and Highways.

ALBERTA

Province of Alberta, Pipeline Act, Chapter P-8, July 15, 1985.

Province of Alberta, Hydro and Electric Energy Act, Chapter H-13, September 1, 1983.

Province of Alberta, Pipeline Regulations, Alberta Regulation 298/75, as amended by Alberta Regulations AR 195/79, AR 186/82 and AR 432/83, March 1984.

Energy Resources Conservation Board, The ERCB Public Hearing Process, Guide G-16.

Energy Resources Conservation Board, (Alberta Environment), Guidelines Respecting an Application to Construct or Alter an Electric Transmission Line, EPCB Guide G-22 1981.

Energy Resources Conservation Board, (Alberta Environment), Pipeline Applications to the ERCB a Guide to Content, 1981.

Energy Resources Conservation Board, Guidelines Respecting Applications for Local Interveners Costs Awards, ERCB G-31, April 1983.

Province of Alberta, Energy Resources Conservation Act, Chapter E-11, February 1984.

Province of Alberta, Energy Resources Conservation Act Rules of Practice, Alberta Regulation 149/71, March 1983.

Province of Alberta, Energy Resources Conservation Act Rules of Practice, Local Interveners' Costs Regulations, Alberta Regulation 517/82, January 1986.

Energy Resources Conservation Board, Changes to Pipeline Application and Approval Procedures, Interim Directive ID 85-2, 20 June 1985.

Agency: Energy Resources Conservation Board.

Province of Alberta, Surface Rights Act, Chapter S-27.1,
September 1, 1983.

Province of Alberta, General Regulation, Alberta Regulation
238/83, 4 July 1983.

Province of Alberta, Rules of Procedure and Practice of the
Surface Rights Board, Alberta Regulation 239/83, 4 July
1983.

Agency: Surface Rights Board.

Province of Alberta, Expropriation Act, Chapter E-16,
August 15, 1984

Agency: Land Compensation Board

ONTARIO

Province of Ontario, Ontario Energy Board Act, R.S.O., Chapter 332.

Province of Ontario, Information required to be filed by applicant for Leave to Construct and Exemption.

Province of Ontario, Environment Guidelines for the Construction and Operation of Hydrocarbon Pipelines in Ontario, 1984.

Agency: Ontario Energy Board

Province of Ontario, Environmental Assessment Act, R.S.O., 1980, Chapter 140, February 1985

Agency: Environmental Assessment Board.

Province of Ontario, Consolidated Hearings Act, 1981, Statutes of Ontario, 1981, Chapter 20 and Ontario Regulation 688/81 as amended by O. Reg. 200/82, January 1984.

Agency: Environmental Assessment Board and Ontario Municipal Board.

Province of Ontario, Expropriations Act, RSO, 1980, Chapter 148, as amended by 1983, Chapter 47 and Regulations 314, 315, 316 and 317, Revised Regulations of Ontario, 1980, March 1985.

Agency: Ontario Municipal Board

Province of Ontario, Power Corporation Act, R.S.O., Chapter 384.

Agency: Ontario Hydro - Minister of Energy

Province of Ontario, Ontario Planning Act, S.O., 1983, Chapter 1, as amended by 1983, Chapter 82 and certain regulations thereunder December 1983.

Agency: Minister of Municipal Affairs and Housing

BIBLIOGRAPHY

FEDERAL

Dunsmore, R.J.C., Canada's Bill C-60, A New Era in Land Acquisition for Pipelines, Right of Way, June 1982, p. 67, 70 & 72.

Fytche, E.L., Changes to National Energy Board Act, Right of Way, December 1984, p. 13 - 15.

House of Commons Debates, Canada, An Act to Amend the National Energy Board Act (Honourable Marc Lalonde), 1st Session, 32nd Parliament, Volume VII, March 6, 1981, p. 8007.

Law Reform Commission of Canada, Expropriation: Working Paper 9, 1975.

Law Reform Commission of Canada, Expropriation, Report to Parliament, 1976.

National Energy Board, Canadian Energy Supply and Demand 1983-2005, Technical Report, September 1984.

National Energy Board, Annual Report 1986.

BRITISH COLUMBIA

Environment and Land Use Committee, Guidelines for Linear Development, British Columbia, March 1977.

Province of British Columbia, Guide to the Energy Project Review Process, Ministry of Energy, Mines and Petroleum Resources, January 1982.

Province of British Columbia, Route Selection and Land Acquisition Procedures for B.C. Hydro and Pipeline Transmission Systems, Ministry of Energy, Mines and Resources, Letter, 4 September, 1986.

Province of British Columbia, Pipeline Route Selection and Acquisition, Ministry of Transportation and Highways, Letter, 13 August, 1986.

ALBERTA

Alberta Agriculture, Surface Rights in Alberta, Agdex No. 878, Revised 1984.

Alberta Agriculture (Farmers' Advocate) Seismic Operation & Farmers' Rights, Agdex 878-2.

Alberta Energy and Natural Resources, The Route Selection Process, A Biophysical Perspective, G.H. Passey, Alberta Forest Service and D.R. Wooley, Scientific and Engineering Services, Edmonton, Alberta, 1980.

Alberta Power Limited, Transmission Lines on or near Your Property, April 1985.

Energy Resources Conservation Board, Alberta Oil Supply, 1985-2010, March, 1985.

Energy Resources Conservation Board, Pipelines and Surface Rights (A Guide for Landowners & Occupants), Guide G-17-3, July 1985.

Energy Resources Conservation Board, Transmission Lines and the Regulatory Process in Alberta, G-16-1, 1980.

Energy Resources Conservation Board, What is the Energy Resources Conservation Board? Enerfax, Factsheet No. 1, October 1985.

Energy Resources Conservation Board, Having your say at an ERCB Public Hearing, Enerfax, Factsheet No. 2, October 1985.

Energy Resources Conservation Board, Route Selection and Land Acquisitions, Letter, 4 June 1986.

Energy Resources Conservation Board, Inspection and Enforcement in Energy Development in Alberta, Enerfax, Factsheet No. 3, October 1985.

Energy Resources Conservation Board, Finding Out, Enerfax, Factsheet No. 4, October 1985.

Petroleum Industry Training Service, Environmental Land Management (Course Material), Hinton, Alberta, 10-14 June 1985.

ONTARIO

Ontario Hydro, Comparable Sale No. 3, Real Estate Services Division, Comparable Sales, File No. 70599, p. 11, May 15, 1985.

Ontario Hydro, Design and Development Division - Transmission, Class Environmental Assessment for Minor Transmission Facilities, March 1978, Revision 3, March 1986.

Ontario Hydro, Eastern Ontario Study Transmission Lines, Letter October 26, 1983, Philip Wong.

Ontario Hydro, Eastern Ontario Transmission Line Study Route Stage Environmental Assessment Summary - Volume 1 & 11, Report No. 84096, August, 1984.

Ontario Hydro, Environmental Guidelines for the Construction and Maintenance of Transmission Facilities, March 1981, Revision 1, March 1986.

Ontario Hydro, Property Compensation Policies, November 1983.

Ontario Hydro, Public Participation in Project Planning for Ontario Hydro.

Ontario Hydro, Rights-of-Way, Bulletin, January, 1978.

Ontario Ministry of the Environment, General Guidelines for the Preparation of Environmental Assessments, Environmental Approvals Branch, second edition, January 1981.

Ontario Ministry of the Environment, Guidelines for Pre-Submission Consultation Associated with the Environmental Assessment Act, Environmental Assessment Branch, February, 1985.

Ottawa Citizen, Bridlewood Power Line Will Cut Home Value: Owners, Friday, October 4, 1985, p. C.2.

Regional Municipality of Ottawa-Carleton, Amendment No. 36 to the Official Plan for the Goulbourn Planning Area, Report 53, File No. 836-3-36, April 11, 1985.

Regional Municipality of Ottawa-Carleton, Report to Planning Commissioner (Allan & Carolyn Sauve Subdivision Part Lot 22, Concession 8, Township of Goulbourn), File No. O6T-84038, May 7, 1986.

GENERAL

Barlowe, R., Land Resource Economics, (The Economics of Real Estate), Michigan, State University, 3rd Edition, 1978.

Black, H.M., Black's Law Dictionary, West Publishing Co., 1979.

Blacksell, M., Watkins, C., Economides, K., Human Geography and Law: a case of separate development in social science, Progress in Human Geography, Volume 10, Number 3, September 1986, p. 371

Bryant, R.W.G., Land Private Property Public Control, Harvest House, Montreal 1972

Coppock, J.T., and Sewell, W.R.D., Spatial Dimensions of Public Policy, Pergamon Press 1976.

Corpus Information Services, Corpus Almanac & Canadian Source Book, 1987, Volume 1.

Coulson, J., The Readers Digest Great Encyclopaedic Dictionary, The Readers Digest Association Limited, 1965.

Dwivedi, O.P., Resources and the Environment: Policy Perspectives for Canada, McClelland and Stewart, 1980.

Estrin, D. and Swaigen, J., Environment on Trial, A Handbook of Ontario Environmental Law, Canadian Environmental Law Research Foundation, Toronto, 1978.

Makuch, S.M., Canadian Municipal and Planning Law, The Carswell Company Limited, Toronto, Ontario, 1983.

Nelson, J.G., Scace, R.C., Kouri, R. Canadian Land-Use in Perspective, Proceedings of a Symposium sponsored by the social science Research Council of Canada, Ottawa, Ontario 25 - 27 October 1973.

Weir, C.H., Klassen, J.P., Fincham, L.J., Hiscott, M.J., Canada's Transportation/Utility Corridors, Paper, 34th Annual Educational Seminar, International Right-of-Way Association, Baltimore, Maryland, June 13, 1988.

Whittick, A., Encyclopedia of Urban Planning, McGraw-Hill Book Company, Van Hoffmann Press Inc., 1974.

APPENDIX I

PERSONAL CONTACTS

BRITISH COLUMBIA

Mr. John Reimer
Supervisor,
Lands & Right-of-Way
&
Mr. B.G.E. (Bernie) Guichon
Manager,
Lands & Right-of-Way Division

Westcoast Transmission Company Limited
1333 West Georgia Street
Vancouver, British Columbia
V6E 3K9

(604) 664-5685

Mr. F.H. Christensen
Chief Inspecting Engineer
Ministry of Transport and Highways
Transportation Engineering Branch
Government of British Columbia
4299 Canada Way, Suite 245
Burnaby, B.C.
V5G 1H9

Mr. E.C. deMoor
B.C. Hydro
3777 Lougheed Highway
Burnaby, British Columbia
V5C 3Y3

Secretary,
British Columbia Utilities
Commission
800 Smithe Avenue
Vancouver, British Columbia
V5G 2E1

Mr. James Hill, P. Eng.
A/Executive Director
Safety Engineering Services Division
Ministry of Labour
601 West Broadway Vancouver, B.C.
V5Z 4G9

(604) 660-6294

The Chief Inspecting Engineer
Ministry of Transportation and Highways
Burnaby, B.C.
V6G 1H3

Mr. Paul Gevatknoff
Resources Protection Officer
Ministry of Forests
9000 - 17th Street
Dawson Creek, B.C.
V1G 4A4

(604) 784-2350

Mr. John Bones
Manager of Policy and Documentation
Ministry of Lands, Parks and Housing
Land Policy Branch
Parliament Buildings
Victoria, B.C.
V8W 1X4

(604) 387-1851

Mr. Art C. Dimock
C.T.C. Liaison Engineer
Bridge Engineering Branch
Ministry of Transportation and Highways
4D - 940 Blanshard St.,
Victoria, B.C.
V8W 3E6

(604) 387-7734

Mr. John Duduman
Senior N.W.P.A. Officer
Transport Canada
Canadian Coast Guard Administration
Western Region
224 West Esplanade
North Vancouver, B.C.
V7M 3J7

(604) 984-3730

Dr. Jon O'Riordan
Director, Planning and Assessment Branch
Ministry of Environment
777 Broughton St.,
Victoria, B.C.
V8V 1X5

(604) 787-3403

Mr. D. Smith
Chairman
Mediation and Arbitration Board
Ministry of Energy, Mines and Petroleum Resources
10142 - 101st Ave.,
Fort St. John, B.C.
V1J 2B3

(604) 387-9669

Mr. Denis O'Gorman
Director
Project Analysis Branch
Energy Resources Divisions
Ministry of Energy, Mines and Petroleum Resources
525 Superior St.,
Victoria, B.C.

(604) 387-3392

Mr. Alan Broughton
Manager, Indian Lands
Department of Indian and Northern Affairs - Canada
Lands, Revenue and Trusts
P.O. Box 1000
800 Burrard St.,
Vancouver, B.C. V6Z 2J3

(604) 666-5121

ALBERTA

Mr. Jim Dilay
Assistant Manager,
&
Mr. Martin Vandenberg
Supervisor of Construction Approvals

Government of Alberta
Energy Resources Conservation Board
640 - 5 Avenue S.W.
Calgary, Alberta
T2P 3G4

Mr. Stan Perchaluk
Government of Alberta
Surface Rights Board
500, 800 - 6 Avenue S.W.
Calgary, Alberta
T2P 3G3

Mr. Dennis Urquhart, P. Eng.
Manager,
Pipeline Division
&
Mr. Bruce Reip
Landman,

Murphy Oil Company Ltd.
1700, 800 - 6 Avenue S.W.
P.O. Box 2721
Calgary, Alberta
T2P 2M7

(403) 294-8000

Mr. John Robinson
&
Ashton Sewlal
Project Liaison Officer

Alberta Power Limited
Standard Life Centre
10405 Jasper Avenue
4th Floor
Edmonton, Alberta
T5J 2V6

(403) 420-7992

Mr. Lawrence E. Smith
Lawyer
&
Mr. Brian O'Farrel
Lawyer

Bennett Jones
Barristers and Solicitors
3200 Shell Centre
400 - 4th Avenue S.W.
Calgary, Alberta
T2P 0X9

(403) 298-3100

ONTARIO

Mr. Peter G. Prier (now Neil McKay)
Pipeline Coordinator
Ontario Energy Board
9th Floor
14 Carlton Street
Toronto, Ontario
M5B 1J2

(416) 598-4000

Mr. Richard A. Sogawa, P. Eng.
Ontario Hydro
Section Head - Approval Projects
Land Use and Environmental Planning Dept.
Route and Site Selection Division
700 University Avenue
Toronto, Ontario
M5G 1X6

(416) 592-3994

Mr. Roger Hunter, M.C.I.P.
Planner
Regional Municipality of Ottawa-Carleton
222 Queen Street
Ottawa, Ontario
K1P 5Z3

(613) 560-2053

END

1|7·0|2·90

FIN