

Detailed electronic hearing procedures – Grassy Mountain Coal Project Hearing

1. Introduction

- 1.1. This document describes the procedures for the electronic hearing to be conducted by the Joint Review Panel (the Panel) established to review the Grassy Mountain Coal Project (the Project) proposed by Benga Mining Limited (Benga).
- 1.2. In these procedures, “hearing participant” refers to any individual, group, Indigenous group, government agency, institution or other entity that has been given participation rights by the Panel, including their witnesses or counsel.

2. Purpose of the electronic hearing procedures

- 2.1. The purpose of these procedures is to allow the Panel to conduct the hearing in a manner that is fair and efficient. The Panel may vary these procedures, as it sees fit, to achieve that end.
- 2.2. The Panel may address any non-compliance with these procedures by Benga or hearing participants as it deems appropriate.
- 2.3. Where there are any discrepancies between these procedures and the *Alberta Energy Regulator (AER) Rules of Practice*,¹ these procedures prevail in accordance with section 42 of the *AER Rules of Practice*.

3. General information for hearing participants

- 3.1. The electronic hearing will be conducted using the Zoom videoconferencing platform. Hearing participants are encouraged to join the hearing from a desktop or laptop computer equipped with a video camera and microphone. If that is not possible, participants may also use a tablet or smartphone to join the hearing.
- 3.2. The electronic hearing will generally follow the same procedures as an in-person hearing. Hearing participants are encouraged to review the *AER Rules of Practice* and *Manual 003: Participant Guide to the Hearing Process*.²
- 3.3. A point of contact (e.g. counsel or other representative) for each Hearing participant must provide their contact information to the Panel Manager and Hearing Coordinator no later than October 9, 2020. The information will be used to provide the connection information for the electronic hearing, which will be sent to the point of contact (e.g. counsel) for each hearing participant via email. Only the Panel manager and the AER Hearing Services team will

¹ Available online: https://www.qp.alberta.ca/documents/Regs/2013_099.pdf

² Available online: <https://www.aer.ca/documents/manuals/Manual003.pdf>

have access to the contact information. The information will be stored in secure folder (not on a shared drive) and the information will be destroyed after its period of intended use, which is the hearing, including to the end of final arguments.

- 3.4. When hearing participants are not actively participating in the hearing, they may choose to observe the hearing utilizing the live stream on YouTube. The Panel recommends this if the participant determines they are not likely to intervene in the hearing for a particular topic of discussion in order to minimize technological impacts and limitations within the Zoom meeting and allow for effective administration of the hearing by the Panel and the Zoom host.
- 3.5. The Hearing Coordinator will schedule a session for hearing participants to test Zoom, computer functionality, and detect any technological issues in mid October. All hearing participants must participate in the test session, for which invitations will be provided by email.
- 3.6. Hearing participants should refer to the guide on bandwidth and internet speed, provided as Appendix A³ to assess and test their internet.
- 3.7. Once in the hearing on Zoom, witnesses will need to enter their name (First name and Last name) and affiliation so that all other hearing participants and observers can see who they are and what group or organization they represent (if any).
- 3.8. Hearing participants, including their counsel and witnesses, should provide their presentations, evidence, questions, and answers to cross-examination from a quiet location within minimal background noise. Everyone must make reasonable efforts to prevent interruptions for the duration of their active participation in the hearing, including silencing sources of noise (e.g. cellular telephones, computer notifications) and preventing in-person interruptions. When actively participating, hearing participants must keep their camera and microphone on, unless instructed to do otherwise by the Panel, Panel counsel, or a member of the Panel secretariat. The video feed should clearly show the face of the hearing participant who is speaking. When asked questions, hearing participants should pause before answering to account for any lag in audio or video. For a guide on audio and video settings and best practices please see Appendix B.⁴

4. Hours of the hearing and breaks

- 4.1. The Panel intends to have shorter sitting times for the electronic hearing as compared to what could normally be expected for an in-person hearing. This adjustment is to facilitate

³ Source: Court of Queen's Bench of Alberta <https://albertacourts.ca/gb/court-operations-schedules/remote-hearings-protocol-troubleshooting>

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hearing participants who will be attending the hearing from various times zones across the country. Generally, the Panel intends to conduct the hearing daily (Monday to Friday and some Saturdays) from 9:00 am – 4:00 pm (MDT/MST) with breaks mid-morning, lunch-time, and in the afternoon. The Panel may need to adjust the schedule and there is a potential for the hearing to start earlier or end later than the hours specified above.

5. Technological issues

- 5.1. If an active hearing participant loses their connection, then the Panel will pause the hearing until that person or person(s) can rejoin the hearing. Alternatively, the Panel will adjourn the hearing until technical issues can be resolved. In the event of an interruption in the video or audio feed lasting greater than 5 minutes, the hearing participant must immediately contact the Zoom Host by telephone at the number or email provided at the end of this document. The hearing participant must then rejoin the hearing by telephone as an interim measure, while they work on resolving technological issues and/or restoring their internet connectivity. The Panel will assess the need to adjourn on a case by case basis, depending on the nature of participation (e.g. need to view documents displayed within the Zoom meeting). Technological and system requirements/best practices are provided in the Appendices.

6. Witnesses

- 6.1. In advance of the hearing, the Panel secretariat will provide hearing participants with a timing window in which they are expected to have their witnesses available to present their evidence and be available for cross examination. This schedule will be updated on an ongoing basis throughout the hearing. As the hearing progresses, the Hearing Coordinator and Panel Manager will refine the hearing schedule as much as possible and provide a specific date for a hearing participant to make its presentation to the Panel. Witnesses must be ready to join the hearing via electronic means 15 mins prior to their designated time. Witnesses can enter the waiting room and the Zoom host will provide entry into the hearing room.

During their testimony, witnesses should only be communicating with other members of the witness panel that the subject witness is a part of or with the person asking them questions. Communication with the person asking them questions must only occur when answering questions.

7. Presentation of documents during the hearing

- 7.1. The Panel secretariat will provide a list of the documents filed on the Canadian Impact Assessment Registry (the registry), along with the documents' associated CIAR document numbers, before the hearing.

- 7.2. Hearing participants are responsible for ensuring they have access to all documents filed on the registry for the Project (i.e. internet access to the registry or documents downloaded ahead of time).
- 7.3. A witness or person asking questions of witnesses may ask for a document from the registry to be presented to the hearing room on Zoom. The request for the presentation of a document needs to include the CIAR document number, document title and the PDF page number to be displayed. The Zoom host will display the document in the Zoom screen for hearing participants and the Panel to view.
- 7.4. If hearing participants have a visual presentation to be displayed by the Zoom host, they are expected to provide it to the Panel Manager and Hearing Coordinator via email (or by email to a file sharing site for any file that is larger than 10 MB) to the Grassy Mountain inbox 24 hours before they are scheduled to present.

8. Additional documents – aids to cross

- 8.1. Hearing participants are expected to provide witnesses with any aids to cross-examination (aids to cross) they intend to use at least 24 hours in advance of when the witnesses are scheduled for cross-examination. Hearing participants should give a reasonable opportunity for aids to cross-examination to be received before they are intended to be used.
- 8.2. The Hearing Coordinator or Panel Manager will provide the aids to cross to the Panel, prior to cross examination of the witnesses, if counsel, or the hearing participant who is conducting cross examination, indicates that the Panel should receive the aid(s).
- 8.3. The Zoom host will display the aid to cross to the hearing, when requested by the examining counsel or hearing participant.
- 8.4. Unless an aid to cross is entered as evidence, and placed on the registry, the aid to cross will be marked as follows: AQ # - participant's name - name of the document.

9. Private communications during the hearing

- 9.1. The Zoom host will use the chat function to communicate administrative messages (e.g. next session starting times and the timing of breaks). Hearing participants should not use the chat function within the electronic hearing platform (Zoom) for private conversations (i.e. solicitor/client, between hearing participants). Communications sent using the Zoom chat may be visible to all hearing participants, the Panel, Panel counsel and Panel secretariat.
- 9.2. Hearing participants must use an alternative means (email, text, telephone/conference calls) or computer program (such as Skype or MS Teams) to have private conversations and share

sensitive or confidential information. At all material times, witnesses and counsel are expected to comply with professional obligations respecting communication with a witness who is under cross examination.

10. Caucusing

10.1. The Panel will allow members of a witness panel that are testifying to caucus with other witness panel members while giving their evidence. If witnesses need to caucus, they must indicate this need to the Panel chair and then mute their microphones but leave their video feed on. Witnesses may caucus using the means/technology of their choice. Individuals who are not part of the witness panel may not participate in the caucusing. Further, other than counsel or individuals asking questions of the witness panel members on the record, no one who is not part of the panel may communicate with those witnesses while the panel is giving evidence.

11. Raising objections or interjecting

11.1. Counsel may turn on their microphone and verbally interject if they wish to raise an objection to something that is being said. If a hearing participant is not represented by counsel, they or their representative may also follow this procedure to interject but the Panel expects that hearing participants do not cause unnecessary interruptions.

12. Court reporting

12.1. Court reporters will take oaths or affirmations from witnesses over video in advance of providing evidence, in accordance with the *Alberta Evidence Act*. Witnesses must have a bible or other sacred object with them and visible, if they choose to be sworn. The transcript prepared by the court reporter will be the official record of the proceeding. Transcripts will be available on a next day basis and will be posted to the AER website and the registry.

13. Recording

13.1. The live stream of the hearing on YouTube will be recorded and made available for 30 days after the close of the record for the hearing. The Panel secretariat will make available a link to the YouTube recordings.

13.2. Hearing participants are not permitted to make any recording (audio, video or otherwise) of the hearing, including photographs and screen captures.

14. Media

- 14.1. Media should direct any inquiries regarding the Panel’s activities to the Panel’s communications advisors at the contacts provided below. The Panel and Panel secretariat will not be available for media interviews.

Alison Reilander
Manager, Communication Operations
Impact Assessment Agency of Canada
343-543-7701 / alison.reilander@canada.ca

Engagement and Communications
Alberta Energy Regulator
media@aer.ca

- 14.2. Members of the media are welcome to observe the hearing via the live YouTube stream.

15. Questions regarding the hearing process

- 15.1. Hearing participants should direct all questions relating to the conduct of the hearing to the panel manager or the hearing coordinator at the contact information provided below.

Tracy Utting
Acting Panel Manager
Impact Assessment Agency of Canada
IAAC.GrassyMountain.AEIC@canada.ca




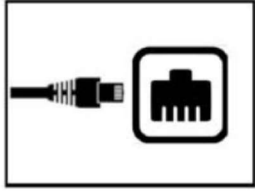
Elaine Arruda
Hearing Coordinator
Alberta Energy Regulator
Hearing.Services@aer.ca

16. Zoom Host Contact information

- 16.1. Hearing.services@aer.ca or 403-560-4143





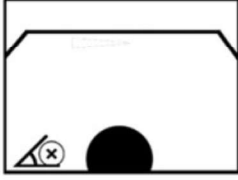

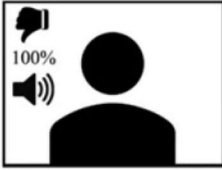




Appendix A - Guide to troubleshooting common issues with bandwidth and internet speed

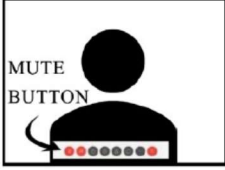
Prior To Your Online Appearance

Common Issue(s) Internet Speed / Bandwidth	Sub-Optimal	Best
<p>Online hearings require an optimal highspeed internet connection to have both high-quality video and sound.</p> <p>You must check your internet’s connection “UPLOAD” ability.</p> <p><u>Upload</u> speeds of 10 Mbps or higher are generally considered adequate.</p> <p>You can find this information by going to websites like: https://speedtest.shaw.ca/ that will provide your upload speed.</p>	 <p>< 10 =</p>	 <p>> +10 =</p>
<p>Many modern routers can broadcast on both 2.4 and 5GHz bands. If you have the option, choose a connection method of 5GHz as it is designed for speed.</p> <p>A wired connection will always be the most stable and most likely to offer highest internal speeds available (internally) to your network.</p>		

Appendix B - Guide to troubleshooting common issues with audio and video

(Desktop / Laptops)

Common Issue(s) Audio and Video	Poor	Better
Position yourself in the center of the visible screen (2-3 feet away).		
Avoid having bright light (of any kind) behind you.		
When using a laptop, elevate the device by 6 - 8 inches when placed in front of you. This way you are: <ul style="list-style-type: none"> • closer to the microphone AND less likely to pick up the sound of papers moving. • in a position to enable good camera angle with less view of ceiling. 		
Prior to joining the hearing, adjust your volume setting to 50% start. This can be adjusted later on once the meeting room has been stabilized by the clerk.		
If you find yourself in an area where you can't control the environment (background noise), there is a tendency to use headphones. By themselves, this does not improve the situation. Your microphone (connected to your laptop/computer) will still pick up background noise and can cause delays in court commencing. Recommended Remediation: Use a headset with a <u>fixed microphone</u> .	 	

Common Issue(s) Audio and Video	Poor	Better
<p>Know the location of your “mute” button on your device when appearing. When not speaking, it is appropriate to mute your device’s microphone (which minimizes background noise).</p>		
<p>Speakers tend to lean backwards (away from the laptop over time). Try to remain as stationary as possible. Not doing so can result in the last few words of a sentence not being clearly heard by other participants.</p>	