

# **ONTARIO ENERGY BOARD**

## **Rules of Practice and Procedure (Revised November 16, 2006, July 14, 2008 and October 13, 2011)**

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### PART I - GENERAL

#### 1. Application and Availability of Rules

- 1.01 These Rules apply to all proceedings of the Board. These Rules, other than the Rules set out in Part VII, also apply, with such modifications as the context may require, to all proceedings to be determined by an employee acting under delegated authority.
- 1.02 These Rules, in English and in French, are available for examination on the Board's website, or upon request from the Board Secretary.
- 1.03 The Board may dispense with, amend, vary or supplement, with or without a hearing, all or part of any Rule at any time, if it is satisfied that the circumstances of the proceeding so require, or it is in the public interest to do so.

#### 2. Interpretation of Rules

- 2.01 These Rules shall be liberally construed in the public interest to secure the most just, expeditious, and efficient determination on the merits of every proceeding before the Board.
- 2.02 Where procedures are not provided for in these Rules, the Board may do whatever is necessary and permitted by law to enable it to effectively and completely adjudicate on the matter before it.
- 2.03 These Rules shall be interpreted in a manner that facilitates the introduction and use of electronic regulatory filing and, for greater certainty, the introduction and use of digital communication and storage media.
- 2.04 Unless the Board otherwise directs, any amendment to these Rules comes into force upon publication on the Board's website.

#### 3. Definitions

- 3.01 In these Rules,

"**affidavit**" means written evidence under oath or affirmation;

"**appeal**" has the meaning given to it in **Rule 17.01**;

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"**appellant**" means a person who brings an appeal;

"**applicant**" means a person who makes an application;

"**application**" when used in connection with a proceeding commenced by an application to the Board, or transferred to the Board by the management committee under section 6(7) of the *OEB Act*, means the commencement by a party of a proceeding other than an appeal;

"**Board**" means the Ontario Energy Board;

"**Board Secretary**" means the Secretary and any assistant Secretary appointed by the Board under the *OEB Act*;

"**Board's website**" means the website maintained by the Board at [www.oeb.gov.on.ca](http://www.oeb.gov.on.ca);

"**document**" includes written documentation, films, photographs, charts, maps, graphs, plans, surveys, books of account, transcripts, videotapes, audio tapes, and information stored by means of an electronic storage and retrieval system;

"**Electricity Act**" means the *Electricity Act, 1998*, S.O. 1998, c.15, Schedule A, as amended from time to time;

"**electronic hearing**" means a hearing held by conference telephone or some other form of electronic technology allowing persons to communicate with one another;

"**employee acting under delegated authority**" means an employee to whom a power or duty of the Board has been delegated under section 6 of the *OEB Act*;

"**fax**" means the transmission of a facsimile of a document by telephone, computer network or other electronic means;

"**file**" means to file with the Board Secretary in compliance with these Rules;

"**form**" means a template for a document intended to demonstrate required content;

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"**hearing**" means a hearing in any proceeding before the Board, and includes an electronic hearing, an oral hearing, and a written hearing;

"**interrogatory**" means a request in writing for information or particulars made to a party in a proceeding;

"**intervenor**" means a person who has been granted intervenor status by the Board;

"**management committee**" means the management committee of the Board established under section 4.2 of the *OEB Act*;

"**market rules**" means the rules made under section 32 of the *Electricity Act*;

"**Minister**" means the Minister as defined in the *OEB Act*;

"**motion**" means a request for an order or decision of the Board made in a proceeding;

"**observer**" means a person who has filed for observer status in compliance with these Rules;

"**OEB Act**" means the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B, as amended from time to time;

"**oral hearing**" means a hearing at which the parties or their representatives attend before the Board in person;

"**party**" includes an applicant, an appellant, an employee acting under delegated authority where applicable, and any person granted intervenor status by the Board;

"**Practice Directions**" means practice directions issued by the Board from time to time;

"**proceeding**" means a process to decide a matter brought before the Board, including a matter commenced by application, notice of appeal, transfer by or direction from the management committee, reference, request or directive of the Minister, or on the Board's own motion;

"**reference**" means any reference made to the Board by the Minister;

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"**serve**" means to effectively deliver, in compliance with these Rules or as the Board may direct;

"**statement**" means any unsworn information provided to the Board;

"**writing**" includes electronic media, formed and secured as directed by the Board;

"**written**" includes electronic media, formed and secured as directed by the Board; and

"**written hearing**" means a hearing held by means of the exchange of documents.

### 4. Procedural Orders and Practice Directions

- 4.01 The Board may at any time in a proceeding make orders with respect to the procedure and practices that apply in the proceeding. Every party shall comply with all applicable procedural orders.
- 4.02 The Board may set time limits for doing anything provided in these Rules.
- 4.03 The Board may at any time amend any procedural order.
- 4.04 Where a provision of these Rules is inconsistent with a provision of a procedural order, the procedural order shall prevail to the extent of the inconsistency.
- 4.05 The Board may from time to time issue *Practice Directions* in relation to the preparation, filing and service of documents or in relation to participation in a proceeding. Every party shall comply with all applicable *Practice Directions*, whether or not specifically referred to in these Rules.

### 5. Failure to Comply

- 5.01 Where a party to a proceeding has not complied with a requirement of these Rules or a procedural order, the Board may:
  - (a) grant all necessary relief, including amending the procedural order, on such conditions as the Board considers appropriate;
  - (b) adjourn the proceeding until it is satisfied that there is compliance;

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or

- (c) order the party to pay costs.
- 5.02 Where a party fails to comply with a time period for filing evidence or other material, the Board may, in addition to its powers set out in **Rule 5.01**, decide to disregard the evidence or other material that was filed late.
- 5.03 No proceeding is invalid by reason alone of an irregularity in form.

### 6. Computation of Time

- 6.01 In the computation of time under these Rules or an order:
- (a) where there is reference to a number of days between two events, the days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens; and
  - (b) where the time for doing an act under these Rules expires on a holiday, as defined under **Rule 6.02**, the act may be done on the next day that is not a holiday.
- 6.02 A holiday means a Saturday, Sunday, statutory holiday, and any day that the Board's offices are closed.

### 7. Extending or Abridging Time

- 7.01 The Board may on its own motion or upon a motion by a party extend or abridge a time limit directed by these Rules, *Practice Directions* or by the Board, on such conditions the Board considers appropriate.
- 7.02 The Board may exercise its discretion under this Rule before or after the expiration of a time limit, with or without a hearing.
- 7.03 Where a party cannot meet a time limit directed by the Rules, *Practice Directions* or the Board, the party shall notify the Board Secretary as soon as possible before the time limit has expired.



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### 8. Motions

- 8.01 Unless the Board directs otherwise, any party requiring a decision or order of the Board on any matter arising during a proceeding shall do so by serving and filing a notice of motion.
- 8.02 The notice of motion and any supporting documents shall be filed and served within such a time period as the Board shall direct.
- 8.03 Unless the Board directs otherwise, a party who wishes to respond to the notice of motion shall file and serve, at least two calendar days prior to the motion's hearing date, a written response, an indication of any oral evidence the party seeks to present, and any evidence the party relies on, in appropriate affidavit form.
- 8.04 The Board, in hearing a motion, may permit oral or other evidence in addition to the supporting documents accompanying the notice, response or reply.

## PART II - DOCUMENTS, FILING, SERVICE

### 9. Filing and Service of Documents

- 9.01 All documents filed with the Board shall be directed to the Board Secretary. Documents, including applications and notices of appeal, shall be filed in such quantity and in such manner as may be specified by the Board.
- 9.02 Any person wishing to access the public record of any proceeding may make arrangements to do so with the Board Secretary.

### 9A Filing of Documents that Contain Personal Information

- 9A.01 Any person filing a document that contains personal information, as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*, of another person who is not a party to the proceeding shall file two versions of the document as follows:
- (a) one version of the document must be a non-confidential, redacted version of the document from which the personal information has been deleted or stricken; and

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- (b) the second version of the document must be a confidential, un-redacted version of the document that includes the personal information and should be marked "Confidential—Personal Information".

9A.02 The non-confidential, redacted version of the document from which the personal information has been deleted or stricken will be placed on the public record. The confidential, un-redacted version of the document will be held in confidence and will not be placed on the public record. Neither the confidential, un-redacted version of the document nor the personal information contained in it will be provided to any other party, including a person from whom the Board has accepted a Declaration and Undertaking under the *Practice Directions*, unless the Board determines that either (a) the redacted information is not personal information, as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*, or (b) the disclosure of the personal information would be in accordance with the *Freedom of Information and Protection of Privacy Act*.

## 10. Confidential Filings

- 10.01 A party may request that all or any part of a document, including a response to an interrogatory, be held in confidence by the Board.
- 10.02 Any request for confidentiality made under **Rule 10.01** shall be made in accordance with the *Practice Directions*.
- 10.03 A party may object to a request for confidentiality by filing and serving an objection in accordance with the *Practice Directions* and within the time specified by the Board.
- 10.04 After giving the party claiming confidentiality an opportunity to reply to any objection made under **Rule 10.03**, the Board may:
  - (a) order the document be placed on the public record, in whole or in part;
  - (b) order the document be kept confidential, in whole or in part;
  - (c) order that the non-confidential redacted version of the document or the non-confidential description or summary of the document prepared by the party claiming confidentiality be revised;
  - (d) order that the confidential version of the document be disclosed under suitable arrangements as to confidentiality; or

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- (e) make any other order the Board finds to be in the public interest.
- 10.05 Where the Board makes an order under **Rule 10.04** to place on the public record any part of a document that was filed in confidence, the party who filed the document may, subject to **Rule 10.06** and in accordance with and within the time specified in the *Practice Directions*, request that it be withdrawn prior to its placement on the public record.
- 10.06 The ability to request the withdrawal of information under **Rule 10.05** does not apply to information that was required to be produced by an order of the Board.
- 10.07 Where a party wishes to have access to a document that, in accordance with the *Practice Directions*, will be held in confidence by the Board without the need for a request under **Rule 10.01**, the party shall make a request for access in accordance with the *Practice Directions*.
- 10.08 Requests for access to confidential information made at times other than during the proceeding in which the confidential information was filed shall be made in accordance with the *Practice Directions*.
- 10.09 The party who filed the information to which a request for access under **Rule 10.07** or **Rule 10.08** relates may object to the request for access by filing and serving an objection within the time specified by the Board.
- 10.10 The Board may, further to a request for access under **Rule 10.07** or **Rule 10.08**, make any order referred to in **Rule 10.04**.

## 11. Amendments to the Evidentiary Record and New Information

- 11.01 The Board may, on conditions the Board considers appropriate:
  - (a) permit an amendment to the evidentiary record; or
  - (b) order an amendment to the evidentiary record that may be necessary for the purpose of a complete record.
- 11.02 Where a party becomes aware of new information that constitutes a material change to evidence already before the Board before the decision

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or order is issued, the party shall serve and file appropriate amendments to the evidentiary record, or serve and file the new information.

11.03 Where all or any part of a document that forms part of the evidentiary record is revised, each revised part shall clearly indicate:

- (a) the date of revision; and
- (b) the part revised.

11.04 A party shall comply with any direction from the Board to provide such further information, particulars or documents as the Board considers necessary to enable the Board to obtain a full and satisfactory understanding of an issue in the proceeding.

## **12. Affidavits**

12.01 An affidavit shall be confined to the statement of facts within the personal knowledge of the person making the affidavit unless the facts are clearly stated to be based on the information and belief of the person making the affidavit.

12.02 Where a statement is made on information and belief, the source of the information and the grounds on which the belief is based shall be set out in the affidavit.

12.03 An exhibit that is referred to in an affidavit shall be marked as such by the person taking the affidavit, and the exhibit shall be attached to and filed with the affidavit.

12.04 The Board may require the whole or any part of a document filed to be verified by affidavit.

## **13. Written Evidence**

13.01 Other than oral evidence given at the hearing, where a party intends to submit evidence, or is required to do so by the Board, the evidence shall be in writing and in a form approved by the Board.

13.02 The written evidence shall include a statement of the qualifications of the person who prepared the evidence or under whose direction or control the evidence was prepared.

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- 13.03 Where a party is unable to submit written evidence as directed by the Board, the party shall:
- (a) file such written evidence as is available at that time;
  - (b) identify the balance of the evidence to be filed; and
  - (c) state when the balance of the evidence will be filed.

### 14. Disclosure

- 14.01 A party who intends to rely on or refer to any document that has not already been filed in a proceeding shall file and serve the document in accordance with the Board's directions.
- 14.02 Any party who fails to comply with **Rule 14.01** shall not put the document in evidence or use it in the cross-examination of a witness, unless the Board otherwise directs.
- 14.03 Where the good character, propriety of conduct or competence of a party is an issue in the proceeding, the party is entitled to be furnished with reasonable information of any allegations at least 15 calendar days prior to the hearing.

## PART III - PROCEEDINGS

### 15. Commencement of Proceedings

- 15.01 Unless commenced by the Board, a proceeding shall be commenced by filing an application or a notice of appeal in compliance with these Rules, and within such a time period as may be prescribed by statute or the Board.
- 15.02 A person appealing an order made under the market rules shall file a notice of appeal within 15 calendar days after being served with a copy of the order, or within 15 calendar days of having completed making use of any provisions relating to dispute resolution set out in the market rules, whichever is later.
- 15.03 An appeal of an order, finding or remedial action made or taken by a standards authority referred to in section 36.3 of the *Electricity Act* shall be

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commenced by the Independent Electricity System Operator by notice of appeal filed within 15 calendar days after being served with a copy of the order or finding or of notice of the remedial action, or within 15 calendar days of receipt of notice of the final determination of any other reviews and appeals referred to in section 36.3(2) of the *Electricity Act*, whichever is later.

### 16. Applications

16.01 An application shall contain:

- (a) a clear and concise statement of the facts;
- (b) the grounds for the application;
- (c) the statutory provision under which it is made; and
- (d) the nature of the order or decision applied for.

16.02 An application shall be in such form as may be approved or specified by the Board and shall be accompanied by such fee as may be set for that purpose by the management committee under section 12.1(2) of the *OEB Act*.

### 17. Appeals

17.01 An “appeal” means:

- (a) an appeal under section 7 of the *OEB Act*;
- (b) a review under section 59(6) of the *OEB Act*;
- (c) a review of an amendment to the market rules under section 33 or section 34 of the *Electricity Act*;
- (d) a review of a provision of the market rules under section 35 of the *Electricity Act*;
- (e) an appeal under section 36, 36.1 or 36.3 of the *Electricity Act*, and
- (f) an appeal under section 7(4) of the *Toronto District Heating Corporation Act, 1998*.

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17.02 A notice of appeal shall contain:

- (a) the portion of the order, decision, market rules or finding or remedial action referred to in **Rule 15.03** being appealed;
- (b) the statutory provision under which the appeal is made;
- (c) the nature of the relief sought, and the grounds on which the appellant shall rely;
- (d) if an appeal of an order made under the market rules under section 36 of the *Electricity Act*, a statement confirming that the appellant has made use of any dispute resolution provisions of the market rules;
- (e) if an application by a market participant for review of a provision of the market rules under section 35 of the *Electricity Act*, a statement confirming that the market participant has made use of any review provisions of the market rules; and
- (f) if an appeal of an order, finding or remedial action under section 36.3 of the *Electricity Act*, a statement confirming that the Independent Electricity System Operator has commenced all other reviews and appeals available to it and such reviews and appeals have been finally determined.

17.03 A notice of appeal shall be in such form as may be approved or specified by the Board and shall be accompanied by such fee as may be set for that purpose by the management committee under section 12.1(2) of the *OEB Act*.

17.04 At a hearing of an appeal, an appellant shall not seek to appeal a portion of the order, decision, market rules, or finding or remedial action referred to in **Rule 15.03** or rely on any ground, that is not stated in the appellant's notice of appeal, except with leave of the Board.

17.05 In addition to those persons on whom service is required by statute, the Board may direct an appellant to serve the notice of appeal on such persons as it considers appropriate.

17.06 The Board may require an appellant to file an affidavit of service indicating how and on whom service of the notice of appeal was made.

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17.07 Subject to **Rule 17.08**, a request by a party to stay part or all of the order, Decision, market rules or finding or remedial action referred to in **Rule 15.03** being appealed pending the determination of the appeal shall be made by motion to the Board.

17.08 For greater certainty, a request to stay shall not be made where a stay is precluded by statute.

17.09 In respect of a motion brought under **Rule 17.07**, the Board may order that implementation of the order, decision or market rules be delayed, on conditions as it considers appropriate.

## 18. Dismissal Without a Hearing

18.01 The Board may propose to dismiss a proceeding without a hearing on the grounds that:

- (a) the proceeding is frivolous, vexatious or is commenced in bad faith;
- (b) the proceeding relates to matters that are outside the jurisdiction of the tribunal; or
- (c) some aspect of the statutory requirements for bringing the proceeding has not been met.

18.02 Where the Board proposes to dismiss a proceeding under **Rule 18.01**, it shall give notice of the proposed dismissal in accordance with the *Statutory Powers Procedure Act*.

18.03 A party wishing to make written submissions on the proposed dismissal shall do so within 10 calendar days of receiving the Board's notice under **Rule 18.02**.

18.04 Where a party who commenced a proceeding has not taken any steps with respect to the proceeding for more than one year from the date of filing, the Board may notify the party that the proceeding shall be dismissed unless the person, within 10 calendar days of receiving the Board's notice, shows cause why it should not be dismissed or advises the Board that the application or appeal is withdrawn.



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18.05 Where the Board dismisses a proceeding, or is advised that the application or appeal is withdrawn, any fee paid to commence the proceeding shall not be refunded.

### 19. Decision Not to Process

19.01 The Board or Board staff may decide not to process documents relating to the commencement of a proceeding if:

- (a) the documents are incomplete;
- (b) the documents were filed without the required fee for commencing the proceeding;
- (c) the documents were filed after the prescribed time period for commencing the proceeding has elapsed; or
- (d) there is some other technical defect in the commencement of the proceeding.

19.02 The Board or Board staff shall give the party who commenced the proceeding notice of a decision made under **Rule 19.01** that shall include:

- (a) reasons for the decision; and
- (b) requirements for resuming processing of the documents, if applicable.

19.03 Where requirements for resuming processing of the documents apply, processing shall be resumed where the party complies with the requirements set out in the notice given under **Rule 19.02** within:

- (a) subject to **Rule 19.03(b)**, 30 calendar days from the date of the notice; or
- (b) 10 calendar days from the date of the notice, where the proceeding commenced is an appeal.

19.04 After the expiry of the applicable time period under **Rule 19.03**, the Board may close its file for the proceeding without refunding any fee that may already have been paid.

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19.05 Where the Board has closed its file for a proceeding under **Rule 19.04**, a person wishing to refile the related documents shall:

- (a) in the case of an application, refile the documents as a fresh application, and pay any fee required to do so; or
- (b) in the case of an appeal, refile the documents as a fresh notice of appeal, except where the time period for filing the appeal has elapsed, in which case the documents cannot be refiled.

## 20. Withdrawal

20.01 An applicant or appellant may withdraw an application or appeal:

- (a) at any time prior to the hearing, by filing and serving a notice of withdrawal signed by the applicant or the appellant, or his or her representative; or
- (b) at the hearing with the permission of the Board.

20.02 A party may by motion seek leave to discontinue participation in a proceeding at any time before a final decision.

20.03 The Board may impose conditions on any withdrawal or discontinuance, including costs, as it considers appropriate.

20.04 Any fee paid to commence the proceeding by an applicant seeking to withdraw under **Rule 20.01** shall not be refunded.

20.05 If the Board has reason to believe that a withdrawal or discontinuance may adversely affect the interests of any party or may be contrary to the public interest, the Board may hold or continue the hearing, or may issue a decision or order based upon proceedings to date.

## 21. Notice

21.01 Any notices required by these Rules or a Board order shall be given in writing, unless the Board directs otherwise.

21.02 The Board may direct a party to give notice of a proceeding or hearing to any person or class of persons, and the Board may direct the method of providing the notice.

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21.03 Where a party has been directed to serve a notice under this Rule, the party shall file an affidavit or statement of service that indicates how, when, and to whom service was made.

### 22. Levels of Participation

22.01 A person who wishes to participate in a proceeding, shall comply with the Rules applicable to the intended level of participation:

- (a) To actively participate in the proceeding as a party, the person shall comply with **Rule 23**.
- (b) To provide comments in writing or through an oral presentation, the person shall comply with **Rule 24**.
- (c) To participate as an observer, the person shall comply with **Rule 25**.

22.02 The manner in which persons may participate in a proceeding as identified in **Rule 22.01** is subject to any provision to the contrary in a notice or procedural order issued by the Board.

### 23. Intervenor Status

23.01 Subject to **Rule 23.05** and except as otherwise provided in a notice or procedural order issued by the Board, a person who wishes to actively participate in the proceeding shall apply for intervenor status by filing and serving a letter of intervention by the date provided in the notice of the proceeding.

23.02 The person applying for intervenor status must satisfy the Board that he or she has a substantial interest and intends to participate actively and responsibly in the proceeding by submitting evidence, argument or interrogatories, or by crossexamining a witness.

23.03 Every letter of intervention shall contain the following information:

- (a) a description of the intervenor, its membership, if any, the interest of the intervenor in the proceeding and the grounds for the intervention;

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- (b) subject to **Rule 23.04**, a concise statement of the nature and scope of the intervenor's intended participation;
- (c) a request for the written evidence, if it is desired;
- (d) an indication as to whether the intervenor intends to seek an award of costs;
- (e) if applicable, the intervenor's intention to participate in the hearing using the French language; and
- (f) the full name, address, telephone number, and fax number, if any, of no more than two representatives of the intervenor, including counsel, for the purposes of service and delivery of documents in the proceeding.

23.04 Where, by reason of an inability or insufficient time to study the document initiating the proceeding, a person is unable to include any of the information required in the letter of intervention under **Rule 23.03(b)**, the person shall:

- (a) state this fact in the letter of intervention initially filed; and
- (b) refile and serve the letter of intervention with the information required under **Rule 23.03(b)** within 15 calendar days of receipt of a copy of any written evidence, or within 15 calendar days of the filing of the letter of intervention, or within 3 calendar days after a proposed issues list has been filed under **Rule 30**, whichever is later.

23.05 A person may apply for intervenor status after the time limit directed by the Board by filing and serving a notice of motion and a letter of intervention that, in addition to the information required under **Rule 23.03**, shall include reasons for the late application.

23.06 The Board may dispose of a motion under **Rule 23.05** with or without a hearing.

23.07 A party may object to a person applying for intervenor status by filing and serving written submissions within 10 calendar days of being served with a letter of intervention.

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23.08 The person applying for intervenor status may make written submissions in response to any submissions filed under **Rule 23.07**.

23.09 The Board may grant intervenor status on conditions it considers appropriate.

### **24. Public Comment**

24.01 Except as otherwise provided in a notice or procedural order issued by the Board, a person who does not wish to be a party in a proceeding, but who wishes to communicate views to the Board, shall file a letter of comment.

24.02 The letter of comment shall include the nature of the person's interest, the person's full name, address and telephone number, as well as any request to make an oral presentation to the Board in respect of the proceeding.

24.03 The Board shall serve a letter of comment filed under **Rule 24.01** on the party who commenced the proceeding and on any other party who requests a copy.

24.04 Any party may file a reply to the letter of comment, and shall serve it on the person who filed the letter and such other persons as directed by the Board.

24.05 Where the Board has permitted a person to make an oral presentation, that person shall contact the Board Secretary to arrange a time to be heard by the Board.

24.06 A person who makes an oral presentation shall not do so under oath or affirmation and shall not be subject to cross-examination, unless the Board directs otherwise.

### **25. Observer Status**

25.01 Except as otherwise provided in a notice or procedural order issued by the Board, a person who is interested in being served with documents issued by the Board in a proceeding shall file a request for the documents desired.

25.02 A person who is interested in being served with documents filed by a party in respect of a proceeding shall file and serve a request for documents on that party.

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- 25.03 A party who has been served with a request under **Rule 25.02** is entitled to be reimbursed by the observer for expenses actually incurred in serving the documents on the observer, unless the Board directs otherwise.
- 25.04 Upon being reimbursed, if applicable, under **Rule 25.03**, the party shall serve the requested documents on the observer.
- 25.05 All documents filed in a proceeding may be examined free of charge at the Board's offices.

### **26. Adjournments**

- 26.01 The Board may adjourn a hearing on its own initiative, or upon motion by a party, and on conditions the Board considers appropriate.
- 26.02 Parties shall file and serve a motion to adjourn at least 10 calendar days in advance of the scheduled date of the hearing.

## **PART IV - PRE-HEARING PROCEDURES**

### **27. Technical Conferences**

- 27.01 The Board may direct the parties to participate in technical conferences for the purposes of reviewing and clarifying an application, an intervention, a reply, the evidence of a party, or matters connected with interrogatories.
- 27.02 The technical conferences may be transcribed, and the transcription, if any, shall be filed and form part of the record of the proceedings.

### **28. Interrogatories**

- 28.01 In any proceeding, the Board may establish an interrogatory procedure to:
- (a) clarify evidence filed by a party;
  - (b) simplify the issues;
  - (c) permit a full and satisfactory understanding of the matters to be considered; or
  - (d) expedite the proceeding.

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28.02 Interrogatories shall:

- (a) be directed to the party from whom the response is sought;
- (b) be numbered consecutively, or as otherwise directed by the Board, in respect of each item of information requested, and should contain a specific reference to the evidence;
- (c) be grouped together according to the issues to which they relate;
- (d) contain specific requests for clarification of a party's evidence, documents or other information in the possession of the party and relevant to the proceeding;
- (e) be filed and served as directed by the Board; and
- (f) set out the date on which they are filed and served.

### **29. Responses to Interrogatories**

29.01 Subject to **Rule 29.02**, where interrogatories have been directed and served on a party, that party shall:

- (a) provide a full and adequate response to each interrogatory;
- (b) group the responses together according to the issue to which they relate;
- (c) repeat the question at the beginning of its response;
- (d) respond to each interrogatory on a separate page or pages;
- (e) number each response to correspond with each item of information requested or with the relevant exhibit or evidence;
- (f) specify the intended witness, witnesses or witness panel who prepared the response, if applicable;
- (g) file and serve the response as directed by the Board; and
- (h) set out the date on which the response is filed and served.

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29.02 A party who is unable or unwilling to provide a full and adequate response to an interrogatory shall file and serve a response:

- (a) where the party contends that the interrogatory is not relevant, setting out specific reasons in support of that contention;
- (b) where the party contends that the information necessary to provide an answer is not available or cannot be provided with reasonable effort, setting out the reasons for the unavailability of such information, as well as any alternative available information in support of the response; or
- (c) otherwise explaining why such a response cannot be given.

A party may request that all or any part of a response to an interrogatory be held in confidence by the Board in accordance with **Rule 10**.

29.03 Where a party is not satisfied with the response provided, the party may bring a motion seeking direction from the Board.

29.04 Where a party fails to respond to an interrogatory made by Board staff, the matter may be referred to the Board.

### **30. Identification of Issues**

30.01 The Board may identify issues that it will consider in a proceeding if, in the opinion of the Board:

- (a) the identification of issues would assist the Board in the conduct of the proceeding;
- (b) the documents filed do not sufficiently set out the matters in issue at the hearing; or
- (c) the identification of issues would assist the parties to participate more effectively in the hearing.

30.02 The Board may direct the parties to participate in issues conferences for the purposes of identifying issues, and formulating a proposed issues list that shall be filed within such a time period as the Board may direct.

30.03 A proposed issues list shall set out any issues that:



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- (a) the parties have agreed should be contained on the list;
- (b) are contested; and
- (c) the parties agree should not be considered by the Board.

30.04 Where the Board has issued a procedural order for a list of issues to be determined in the proceeding, a party seeking to amend the list of issues shall do so by way of motion.

### **31. Alternative Dispute Resolution**

31.01 The Board may direct that participation in alternative dispute resolution (“ADR”) be mandatory.

31.02 An ADR conference shall be open only to parties and their representatives, unless the Board directs or the parties agree otherwise.

31.03 A Board member shall not participate in an ADR conference, and the conference shall not be transcribed or form part of the record of a proceeding.

31.04 The Board may appoint a person to chair an ADR conference.

31.05 The chair of an ADR conference may enquire into the issues and shall attempt to effect a comprehensive settlement of all issues or a settlement of as many of the issues as possible.

31.06 The chair of an ADR conference may attempt to effect a settlement of issues by any reasonable means including:

- (a) clarifying and assessing a party's position or interests;
- (b) clarifying differences in the positions or interests taken by the respective parties;
- (c) encouraging a party to evaluate its own position or interests in relation to other parties by introducing objective standards; and
- (d) identifying settlement options or approaches that have not yet been considered.

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- 31.07 Subject to **Rule 31.08**, where a representative attends an ADR conference without the party, the representative shall be authorized to settle issues.
- 31.08 Any limitations on a representative's authority shall be disclosed at the outset of the ADR conference.
- 31.09 All persons attending an ADR conference shall treat admissions, concessions, offers to settle and related discussions as confidential and shall not disclose them outside the conference, except as may be agreed.
- 31.10 Admissions, concessions, offers to settle and related discussions in **Rule 31.09** shall not be admissible in any proceeding without the consent of the affected parties.

## **32. Settlement Proposal**

- 32.01 Where some or all of the parties reach an agreement, the parties shall make and file a settlement proposal describing the agreement in order to allow the Board to review and consider the settlement.
- 32.02 The settlement proposal shall identify for each issue those parties who agree with the settlement of the issue and any parties who disagree.
- 32.03 The parties shall ensure that the settlement proposal contains or identifies evidence sufficient to support the settlement proposal and shall provide such additional evidence as the Board may require.
- 32.04 A party who does not agree with the settlement of an issue will be entitled to offer evidence in opposition to the settlement proposal and to cross-examine on the issue at the hearing.
- 32.05 Where evidence is introduced at the hearing that may affect the settlement proposal, any party may, with leave of the Board, withdraw from the proposal upon giving notice and reasons to the other parties, and **Rule 32.04** applies.
- 32.06 Where the Board accepts a settlement proposal as a basis for making a decision in the proceeding, the Board may base its findings on the settlement proposal, and on any additional evidence that the Board may have required.

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### 33. Pre-Hearing Conference

33.01 In addition to technical, issues and ADR conferences, the Board may, on its own motion or at the request of any party, direct the parties to make submissions in writing or to participate in pre-hearing conferences for the purposes of:

- (a) admitting certain facts or proof of them by affidavit;
- (b) permitting the use of documents by any party;
- (c) recommending the procedures to be adopted;
- (d) setting the date and place for the commencement of the hearing;
- (e) considering the dates by which any steps in the proceeding are to be taken or begun;
- (f) considering the estimated duration of the hearing; or
- (g) deciding any other matter that may aid in the simplification or the just and most expeditious disposition of the proceeding.

33.02 The Board Chair may designate one member of the Board or any other person to preside at a pre-hearing conference.

33.03 A member of the Board who presides at a pre-hearing conference may make such orders as he or she considers advisable with respect to the conduct of the proceeding, including adding parties.

## PART V - HEARINGS

### 34. Hearing Format and Notice

34.01 In any proceeding, the Board may hold an oral, electronic or written hearing, subject to the *Statutory Powers Procedure Act* and the statute under which the proceeding arises.

34.02 The format, date and location of a hearing shall be determined by the Board.

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34.03 Subject to **Rule 21.02**, the Board shall provide written notice of a hearing to the parties, and to such other persons or class of persons as the Board considers necessary.

### **35. Hearing Procedure**

35.01 Parties to a hearing shall comply with any directions issued by the Board in the course of the proceeding.

### **36. Summons**

36.01 A party who requires the attendance of a witness or production of a document or thing at an oral or electronic hearing may obtain a Summons from the Board Secretary.

36.02 Unless the Board directs otherwise, the Summons shall be served personally and at least 48 hours before the time fixed for the attendance of the witness or production of the document or thing.

36.03 The issuance of a Summons by the Board Secretary, or the refusal of the Board Secretary to issue a Summons, may be brought before the Board for review by way of a motion.

### **37. Hearings in the Absence of the Public**

37.01 Subject to the *Statutory Powers Procedure Act* and the statute under which the proceeding arises, the Board may hold an oral or electronic hearing or part of the hearing in the absence of the public, with such persons in attendance as the Board may permit and on such conditions as the Board may impose.

### **38. Constitutional Questions**

38.01 Where a party intends to raise a question about the constitutional validity or applicability of legislation, a regulation or by-law made under legislation, or a rule of common law, or where a party claims a remedy under subsection 24(1) of the Canadian Charter of Rights and Freedoms, notice of a constitutional question shall be filed and served on the other parties and the Attorneys General of Canada and Ontario as soon as the circumstances requiring notice become known and, in any event, at least 15 calendar days before the question is argued.

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38.02 Where the Attorneys General of Canada and Ontario receive notice, they are entitled to adduce evidence and make submissions to the Board regarding the constitutional question.

38.03 The notice filed and served under **Rule 38.01** shall be in substantially the same form as that required under the Rules of Civil Procedure for notice of a constitutional question.

### **39. Hearings in French**

39.01 Subject to this Rule, evidence or submissions may be presented in either English or French.

39.02 The Board may conduct all or part of a hearing in French when a request is made:

- (a) by a party;
- (b) by a person seeking intervenor status at the time the application for intervenor status is made; or
- (c) by a person making an oral presentation under **Rule 24** who indicates to the Board Secretary the desire to make the presentation in French.

39.03 Where all or part of a hearing is to be conducted in French, the notice of the hearing shall specify in English and French that the hearing is to be so conducted, and shall further specify that English may also be used.

39.04 Where a written submission or written evidence is provided in either English or French, the Board may order any person presenting such written submission or written evidence to provide it in the other language if the Board considers it necessary for the fair disposition of the matter.

### **40. Media Coverage**

40.01 Radio and television recording of an oral or electronic hearing which is open to the public may be permitted on conditions the Board considers appropriate, and as directed by the Board.

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40.02 The Board may refuse to permit the recording of all or any part of an oral or electronic hearing if, in the opinion of the Board, such coverage would inhibit specific witnesses or disrupt the proceeding in any way.

### PART VI - COSTS

#### 41. Cost Eligibility and Awards

41.01 Any person may apply to the Board for eligibility to receive cost awards in Board proceedings in accordance with the *Practice Directions*.

41.02 Any person in a proceeding whom the Board has determined to be eligible for cost awards under **Rule 41.01** may apply for costs in the proceeding in accordance with the *Practice Directions*.

### PART VII - REVIEW

#### 42. Request

42.01 Subject to **Rule 42.02**, any person may bring a motion requesting the Board to review all or part of a final order or decision, and to vary, suspend or cancel the order or decision.

42.02 A person who was not a party to the proceeding must first obtain the leave of the Board by way of a motion before it may bring a motion under **Rule 42.01**.

42.03 The notice of motion for a motion under **Rule 42.01** shall include the information required under **Rule 44**, and shall be filed and served within 20 calendar days of the date of the order or decision.

42.04 Subject to **Rule 42.05**, a motion brought under **Rule 42.01** may also include a request to stay the order or decision pending the determination of the motion.

42.05 For greater certainty, a request to stay shall not be made where a stay is precluded by statute.

42.06 In respect of a request to stay made in accordance with **Rule 42.04**, the Board may order that the implementation of the order or decision be delayed, on conditions as it considers appropriate.

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### 43. Board Powers

43.01 The Board may at any time indicate its intention to review all or part of any order or decision and may confirm, vary, suspend or cancel the order or decision by serving a letter on all parties to the proceeding.

43.02 The Board may at any time, without notice or a hearing of any kind, correct a typographical error, error of calculation or similar error made in its orders or decisions.

### 44. Motion to Review

44.01 Every notice of a motion made under **Rule 42.01**, in addition to the requirements under **Rule 8.02**, shall:

- (a) set out the grounds for the motion that raise a question as to the correctness of the order or decision, which grounds may include:
  - (i) error in fact;
  - (ii) change in circumstances;
  - (iii) new facts that have arisen;
  - (iv) facts that were not previously placed in evidence in the proceeding and could not have been discovered by reasonable diligence at the time; and
- (b) if required, and subject to **Rule 42**, request a stay of the implementation of the order or decision or any part pending the determination of the motion.

### 45. Determinations

45.01 In respect of a motion brought under **Rule 42.01**, the Board may determine, with or without a hearing, a threshold question of whether the matter should be reviewed before conducting any review on the merits.