

ONTARIO ENERGY BOARD

Rules of Practice and Procedure for Enforcement Proceedings April 24, 2014

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PART I - GENERAL

1. Definitions

1.01 In these Rules,

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

"**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.ontarioenergyboard.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;

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

"**enforceable provision**" has the meaning given to it in the OEB Act;

"**enforcement proceeding**" means a proceeding commenced further to a notice given to the Board under section 112.2(4) or section 112.11(3) of the OEB Act;

"**enforcement team**" means, in respect of a given enforcement proceeding, any member of Board staff who is participating in the enforcement proceeding in a prosecutorial role, and any person representing Board staff in that capacity;

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

"**General Rules**" means the Rules of Practice and Procedure made by the Board under section 25.1 of the *Statutory Powers Procedure Act*

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(Ontario), as amended from time to time, and that apply to all proceedings before the Board other than enforcement proceedings;

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

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

"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" means, in respect of a given enforcement proceeding, Board staff on the enforcement team; the regulated entity and any person granted intervenor status by the Board, and all references to "party" in these Rules shall be interpreted accordingly in the context of the enforcement proceeding;

"Practice Direction on Confidential Filings" means the *Practice Direction* bearing that name made by the Board under the General Rules;

"Practice Directions" means practice directions issued by the Board from time to time under and for the purposes of these Rules;

"regulated entity" means, in respect of a given enforcement proceeding, the person named in the notice issued by the Board under section 112.2(2) of the OEB Act or in the order issued by the Board under section 112.11(1) of the OEB Act, as applicable, that is the subject of the enforcement proceeding;

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

"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

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

2. Application and Availability of Rules

- 2.01 These Rules apply to enforcement proceedings. The General Rules do not apply to enforcement proceedings.
- 2.02 These Rules, in English and in French, are available for examination on the Board's website, or upon request from the Board Secretary.
- 2.03 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 enforcement proceeding so require, or it is in the public interest to do so.

3. Interpretation of Rules

- 3.01 These Rules shall be liberally construed in the public interest to secure the most just, expeditious, and efficient determination on the merits of every enforcement proceeding before the Board.
- 3.02 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.
- 3.03 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.
- 3.04 Unless the Board otherwise directs, any amendment to these Rules comes into force upon publication on the Board's website.

4. Procedural Orders and Practice Directions

- 4.01 The Board may at any time in an enforcement proceeding make orders with respect to the procedure and practices that apply in the enforcement proceeding. Every party shall comply with all applicable procedural orders.

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- 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 enforcement proceedings. Every party shall comply with all applicable *Practice Directions*, whether or not specifically referred to in these Rules.
- 4.06 The *Practice Direction on Confidential Filings* made by the Board under the General Rules, as that *Practice Direction* may be amended from time to time, applies to enforcement proceedings with such modifications as the context may require, and is for that purpose deemed to be a *Practice Direction* made under these Rules.

5. Failure to Comply

- 5.01 Where a party to an enforcement 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 enforcement proceeding until it is satisfied that there is compliance; or
 - (c) order the party to pay costs.
- 5.02 Where a party fails to comply with a time period for filing or serving evidence or other material, the Board may, in addition to its powers set out in Rule 5.01, disregard the evidence or other material that was filed or served late.
- 5.03 No enforcement 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:

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- (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, a *Practice Direction* 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, a *Practice Direction* or the Board, the party shall notify the Board Secretary as soon as possible before the time limit has expired

8. Motions

- 8.01 Unless the Board directs otherwise, any party requiring a decision or order of the Board on any matter arising during an enforcement proceeding shall do so by serving and filing a notice of motion.
- 8.02 Subject to Rule 16.02, the notice of motion and any supporting documents shall be filed and served at least five calendar days in advance of the scheduled date of the hearing or of any step in the pre-hearing process that has been scheduled by a Procedural Order of the Board that may be affected by the motion, or within such other time period as the Board shall direct.
- 8.03 A party who wishes to respond to the notice of motion shall file and serve, at least three calendar days prior to the motion's hearing date, a written

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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.
- 8.05 At any time prior to the scheduling of the hearing in an enforcement proceeding, any party may bring a motion for the determination of a question of law raised by the proceeding, where it is shown that the determination of the question may dispose of all or part of the proceeding, substantially shorten the hearing, or result in a substantial saving of costs.

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 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 an enforcement proceeding may make arrangements to do so with the Board Secretary.

10. Filing of Documents that Contain Personal Information

- 10.01 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 enforcement 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
 - (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".

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- 10.02 Any person serving 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 enforcement proceeding shall redact the personal information from the document and serve a non-confidential, redacted version of the document from which the personal information has been deleted or stricken.
- 10.03 The non-confidential, redacted version of a filed 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 filed document will be held in confidence and will not be placed on the public record. Neither the confidential, un-redacted version of the filed 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 Direction on Confidential Filings*, 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*.

11. Confidentiality

- 11.01 A party may request that all or any part of a document be held in confidence by the Board.
- 11.02 Any request for confidentiality made under Rule 11.01 shall be made in accordance with the *Practice Direction on Confidential Filings*.
- 11.03 A party may object to a request for confidentiality by filing and serving an objection in accordance with the *Practice Direction on Confidential Filings* and within the time specified by the Board.
- 11.04 After giving the party claiming confidentiality an opportunity to reply to any objection made under Rule 11.03, the Board may:
- (a) order the document be placed on the public record or served on one or more parties, 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

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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
- (e) make any other order the Board finds to be in the public interest.

11.05 Where the Board makes an order under Rule 11.04 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 11.06 and in accordance with and within the time specified in the *Practice Direction on Confidential Filings*, request that it be withdrawn prior to it being served or placed on the public record.

11.06 The ability to request the withdrawal of information under Rule 11.05 does not apply to information that was required to be produced by an order of the Board.

11.07 Where a party wishes to have access to a document that, in accordance with the *Practice Direction on Confidential Filings*, will be held in confidence by the Board without the need for a request under Rule 11.01, the party shall make a request for access in accordance with the *Practice Direction on Confidential Filings*.

11.08 Requests for access to confidential information made at times other than during the enforcement proceeding in which the confidential information was filed shall be made in accordance with the *Practice Direction on Confidential Filings*.

11.09 The party who requested confidential treatment for the information to which a request for access under Rule 11.07 or Rule 11.08 relates may object to the request for access by filing and serving an objection within the time specified by the Board.

11.10 The Board may, further to a request for access under Rule 11.07 or Rule 11.08, make any order referred to in Rule 11.04.

12. Amendments to the Evidentiary Record and New Information

12.01 The Board may, on conditions the Board considers appropriate:

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- (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.
- 12.02 Where a party becomes aware of new information that constitutes a material change to evidence already before the Board before the decision or order is issued, the party shall serve and file appropriate amendments to the evidentiary record, or serve and file the new information.
- 12.03 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.
- 12.04 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 enforcement proceeding.

13. Evidence by Affidavit

- 13.01 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.
- 13.02 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.
- 13.03 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.
- 13.04 The Board may require the whole or any part of a document filed to be verified by affidavit.
- 13.05 Where an inspection has been conducted under Part VII or Part VII.0.1 of the OEB Act in relation to any matter at issue in an enforcement proceeding, the Board may receive into evidence, without further proof, by

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affidavit of the inspector or of an employee of the inspector who took part in the inspection:

- (a) any report of the inspector, or portion of such report, that was delivered by the inspector to the Board relating to the findings, opinions and conclusions of the inspector on any matter in issue in the proceeding; and
- (b) any transcription, recording or copy of any document, record or information in any form obtained by the inspector from the regulated entity or its employees, consultants or other representatives during the inspection; and
- (c) any other document, information or thing gathered during the inspection that related to a matter at issue in the proceeding;

provided that the person swearing the affidavit shall be available, if required by the Board, to give additional oral evidence by examination or cross-examination on a motion or at the hearing.

14. Expert Evidence

14.01 A party may engage one or more experts to give evidence in an enforcement proceeding on issues that are relevant to the enforcement proceeding and that are within the expert's area of expertise.

14.02 It is the duty of every expert engaged to provide evidence in relation to an enforcement proceeding,

- (a) to provide opinion evidence that is fair, objective and non-partisan;
- (b) to provide opinion evidence that is related only to matters that are within the expert's area of expertise; and
- (c) to provide such additional assistance as the Board may reasonably require to determine a matter in issue.

14.03 An expert's evidence shall, at a minimum, include the following:

- (a) the expert's name, business name and address, and general area of expertise;

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- (b) the expert's qualifications, including the expert's relevant educational and professional experience in respect of each issue in the enforcement proceeding to which the expert's evidence relates;
- (c) the instructions provided to the expert in relation to the enforcement proceeding and, where applicable, to each issue in the enforcement proceeding to which the expert's evidence relates;
- (d) the specific information upon which the expert's evidence is based, including a description of any factual assumptions made and research conducted, and a list of the documents relied on by the expert in preparing the evidence;
- (e) in the case of evidence that is provided in response to another expert's evidence, a summary of the points of agreement and disagreement with the other expert's evidence; and
- (f) an acknowledgement of the expert's duties in Form A signed by the expert.

14.04 A party that engages an expert shall ensure that the expert is made aware of, and has agreed to accept, the responsibilities that are or may be imposed on the expert as set out in this Rule 14 and Form A.

PART III – ENFORCEMENT PROCEEDING

15. Adjournments

15.01 The Board may adjourn a hearing in an enforcement proceeding on its own initiative, or upon motion by a party, and on conditions the Board considers appropriate.

15.02 Despite 8.02 a motion to adjourn a scheduled hearing, and other any motion that if granted may result in an adjournment of a scheduled hearing, shall be filed and served at least 10 calendar days in advance of the scheduled date of the hearing.

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16. Disclosure

- 16.01 No party shall file evidence with the Board in advance of the commencement of the hearing in an enforcement proceeding except:
- (a) with the consent of all other parties;
 - (b) as directed by the Board;
 - (c) as required or allowed by Rule 18; or
 - (d) in support of a motion seeking a decision or order of the Board.
- 16.02 A party to an enforcement proceeding shall serve on all other parties:
- (a) a copy of every document that the party intends to produce or enter into evidence in the enforcement proceeding;
 - (b) a list of the witnesses that the party intends to call;
 - (c) for each witness that the party intends to call, a witness statement or a summary of the anticipated oral evidence of the witness, prepared in accordance with Rule 17.01; and
 - (d) any document the disclosure of which is required by decision or order of the Board.
- 16.03 In addition to the disclosure required by Rule 16.02, the enforcement team shall serve on the regulated entity any other document in the possession or control of the enforcement team that is relevant to a response made, proposed to be made, or that can reasonably be expected to be made by the regulated entity in respect of the matters at issue in the enforcement proceeding.
- 16.04 The list referred to in Rule 16.02(b) and a witness statement or summary referred to in Rule 16.02(c) shall be served not less than two weeks prior to the commencement of the hearing in an enforcement proceeding.
- 16.05 A document that is not disclosed as required under these Rules shall not be introduced as evidence in an enforcement proceeding except with leave of the Board.

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17. Witnesses

17.01 A witness statement or a summary of the anticipated oral evidence of a witness referred to in Rule 16.02(c) shall be in writing, shall be signed by the witness and shall contain:

- (a) the substance of the evidence of the witness;
- (b) a list of documents or things, if any, to which the witness will refer; and
- (c) the witness's name and contact information or, if the witness's contact information is not provided, the name and contact information of a person through whom the witness may be contacted.

17.02 The Board may make an order excluding a witness or witnesses from an oral or electronic hearing in an enforcement proceeding until the excluded witness is called to give evidence.

17.03 Where an order is made excluding a witness under Rule 17.02, no party] shall communicate to the excluded witness any evidence given during the witness' absence from the hearing or provide the excluded witness with a copy of any witness statement or summary of another witness, until after the excluded witness has been called to give evidence and has finished giving evidence.

18. Pre-Hearing Conference

18.01 The Board may, on its own motion or at the request of any party to an enforcement proceeding, 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 in the enforcement proceeding;
- (d) setting the date and place for the commencement of the hearing;

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- (e) considering the dates by which any steps in the enforcement proceeding are to be taken or begun;
- (f) considering the estimated duration of the hearing;
- (g) ensuring that the regulated entity has received sufficient disclosure of evidence in the enforcement team's possession or control;
- (h) the simplification or narrowing of issues;
- (i) the possibility of obtaining admissions which may facilitate the enforcement proceeding;
- (j) identifying procedural and legal issues that may arise during the enforcement proceeding; and
- (k) any other matter that may aid in the simplification or the just and most expeditious disposition of the enforcement proceeding.

18.02 The Board Chair may designate one member of the Board or any other person to preside at a pre-hearing conference held in the context of an enforcement proceeding. 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 enforcement proceeding.

18.03 Where a pre-hearing conference is directed in the context of an enforcement proceeding, the enforcement team shall, and other parties may, serve on all other parties a pre-hearing conference memorandum that contains the following:

- (a) a brief statement of facts and allegations;
- (b) a description of the legal issues to be determined in the enforcement proceeding; and
- (c) a copy of any document(s) that would assist in making the pre-hearing conference more effective or efficient.

A pre-hearing memorandum shall be served at least seven days before the date of the pre-hearing conference.

18.04 Unless otherwise directed by the Board:

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- (a) all parties to the enforcement proceeding shall attend at and participate in any pre-hearing conference; and
- (b) no person other than representatives of the parties to the enforcement proceeding may attend at a pre-hearing conference.

18.05 A person attending a pre-hearing conference shall treat the following as confidential and shall not disclose any of the following outside the pre-hearing conference except as may be agreed by all of the parties to the enforcement proceeding or as may be included in the memorandum referred to in Rule 18.06:

- (a) all pre-hearing conference memoranda served under Rule 18.03; and
- (b) statements made or views expressed during the pre-hearing conference.

18.06 All agreements reached and orders made at a pre-hearing conference shall be recorded in a memorandum. The memorandum shall be prepared by the Board member or other person presiding at the pre-hearing conference or, if none, by the parties. The memorandum shall be filed with the Board and served on all parties.

18.07 A Board member conducting a pre-hearing conference shall not preside at the hearing on the merits of the proceeding, except with the consent of the parties to the proceeding.

19. Hearing Format and Notice

19.01 In an enforcement proceeding, the Board may hold an oral, electronic or written hearing, subject to the *Statutory Powers Procedure Act* and the OEB Act.

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

19.03 The Board shall provide written notice of a hearing to the regulated entity, to any person granted intervenor status in the enforcement proceeding and to such other persons or class of persons as the Board considers necessary.

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20. Hearing Procedure

20.01 Parties to an enforcement proceeding shall comply with any directions issued by the Board in the course of the enforcement proceeding.

21. Summons

21.01 A party who requires a witness to give evidence at an oral or electronic hearing in an enforcement proceeding and, if applicable, to produce in evidence a document or thing at that hearing may obtain a Summons from the Board Secretary.

21.01A A party seeking the production of documents from third parties in connection with an enforcement proceeding shall bring a motion, on notice to the person from whom production is sought, returnable before the panel of the Board that is seized with hearing the proceeding, and shall not require the production of any documents prior to the commencement of the hearing unless the Panel orders otherwise.

21.02 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 by the witness.

21.03 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.

22. Hearings in the Absence of the Public

22.01 Subject to the *Statutory Powers Procedure Act* and the OEB Act, 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.

23. Constitutional Questions

23.01 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

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circumstances requiring notice become known and, in any event, at least 15 calendar days before the question is argued.

- 23.02 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.
- 23.03 The notice filed and served under Rule 23.01 shall be in substantially the same form as that required under the Rules of Civil Procedure for notice of a constitutional question.

24. Hearings in French

- 24.01 Subject to this Rule, evidence or submissions may be presented in either English or French.
- 24.02 The Board may conduct all or part of a hearing in French when a request is made:
- (a) by a party; or
 - (b) by a person seeking intervenor status at the time the motion for intervenor status is made.
- 24.03 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.
- 24.04 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.

25. Media Coverage

- 25.01 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.
- 25.02 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 a witness or disrupt the enforcement proceeding in any way.

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PART IV - COSTS

26. Costs

26.01 As set out in section 30 of the OEB Act, the Board may make an interim or final order in an enforcement proceeding or a review referred to in Part V that provides:

- (a) by whom and to whom any costs are to be paid;
- (b) the amount of any costs to be paid or by whom any costs are to be assessed or allowed; and
- (c) when any costs are to be paid.

The costs may include the costs of the Board, regard being had to the time and expenses of the Board.

26.02 Costs may be awarded against the enforcement team only in special or exceptional circumstances or where its actions have been frivolous or vexatious.

PART V - REVIEW

27. Request

27.01 A party to an enforcement proceeding 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.

27.02 The notice of motion for a motion under Rule 27.01 shall include the information required under Rule 29, and shall be filed and served within 20 calendar days of the date of the order or decision.

27.03 Subject to Rule 27.04, a motion brought under Rule 27.01 may also include a request to stay the order or decision pending the determination of the motion.

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

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27.05 In respect of a request to stay made in accordance with Rule 27.03, the Board may order that the implementation of the order or decision be stayed, on conditions as it considers appropriate.

28. Board Powers

28.01 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.

29. Motion to Review

29.01 Every notice of a motion made under Rule 27.01, 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; or
 - (iv) facts that were not previously placed in evidence in the enforcement proceeding and could not have been discovered by reasonable diligence at the time; and
- (b) if required, and subject to Rule 27, request a stay of the implementation of the order or decision or any part pending the determination of the motion.

30. Determinations

30.01 In respect of a motion brought under Rule 27.01, 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.