

PUBLIC UTILITIES ACT
YUKON UTILITIES BOARD
RULES OF PRACTICE

Definitions

1. In these rules:

“Act” means the *Public Utilities Act*;

“affidavit” means either a sworn or affirmed statement of facts, based on personal knowledge or on information and belief, and in writing, made voluntarily before an officer having authority to administer such oath or affirmation;

“applicant” means a person who has filed an application with the Board under the Act or its regulations;

“application” means a written request to the Board to exercise its powers in respect of matters referred to in the application;

“Board” means the Yukon Utilities Board;

“information request” means any request made in writing by a party in a proceeding for information or particulars directed to another party in a proceeding;

“intervener” means a person, other than the applicant, who has formally filed for registration in respect of a proceeding and who intends to participate in the production and testing of evidence and whose registration has been approved by the Board pursuant to section 24;

“motion” means a request for a ruling or order in a proceeding or a pending proceeding;

“party” means either an applicant or an intervener;

“person” includes an unincorporated group of individuals, a partnership, and a government department or agency;

“presenter” means any person who makes an unsworn or un-affirmed statement concerning an application to the Board in respect of a proceeding;

“proceeding” means the public hearing process in respect of a matter over which the Board has jurisdiction;

“record” includes documents, maps, drawings, photographs, letters, papers and any other thing on which information is recorded or stored by electronic or other means.

“representative” means the agent of or solicitor of party;

“secretary” means the secretary or acting secretary of the Board;

Application of Rules

2. (1) These Rules apply to all proceedings of the Board.

(2) In any proceeding, the Board may, with or without a hearing, dispense with, vary or supplement all or any part of these rules if it is satisfied that the circumstances of any hearing or other proceeding require it.

Setting of time limits and extending or abridging time

3. (1) The Board may set time limits for doing anything provided for in these rules.

(2) The Board may, on its own initiative or on motion by a party, extend or abridge a time limit specified in these rules or by the rules or in a direction, on any terms that the Board considers appropriate.

(3) The Board may, with or without a hearing, exercise its discretion under this section before or after the expiration of a time limit specified in these rules or a direction by the Board.

Direction on procedure

4. (1) In any proceeding, the Board may issue directions on procedure which will govern the conduct of that proceeding.

(2) The Board may require that interveners with similar interests present a joint intervention and may issue directions with respect to time limits for the joint intervention.

(3) An application shall be in writing and filed with the Board electronically. On receiving the application, the Board may issue directions with respect to serving the application on interested persons or groups and with respect to other matters of procedure and time limits for the proposed application.

Filing with the Board and Service of Documents

5. (1) Any record shall be filed with the Board electronically by e-mailing a copy to the secretary or as otherwise directed by the Board. Any document over 20 pages in length that is filed electronically must also be provided in hard copy to the Board.

(2) A document required to be served under these rules or by the Board may be served on a person or a party:

- a) by personal delivery
- b) by courier service, ordinary mail, fax or by electronic means to the address given by the person or party, or
- c) by such other method as the Board directs.

Affidavits

6. (1) A party to a proceeding may submit an affidavit or statutory declaration as part of an application which shall be filed in accordance with direction given by the Board.

(2) Where an affidavit or statutory declaration is made on the basis of information and belief, the source of the information and the grounds of belief shall be set out in the affidavit.

(3) Where an affidavit or statutory declaration has been filed with the Board, a party may apply to the Board during a proceeding to cross-examine the deponent on the affidavit or statutory declaration.

Exception

7. The Board may direct that a proceeding be limited to the filing of written evidence and that any questions arising from the written evidence be dealt with by written information requests and responses to information requests as provided by these rules.

Failure to comply

8. Where a party to a proceeding before the Board fails to comply with an order of the Board, a direction of the Board or these rules, the Board may take such steps as are necessary to ensure the integrity of the hearing process including disallowance of evidence, making an order as to costs or such other steps as the Board considers fair and reasonable.

Formulation of issues

9. The Board may formulate issues that are to be considered by it in a proceeding and the Board may direct parties to propose issues which, if not agreed to by all parties, shall be settled by the Board:

- a) where the records filed with the Board do not sufficiently address the matters at issue in the proceeding,
- b) where it would assist the Board in the conduct of the proceeding, or
- c) where it would assist parties to participate more effectively in the proceeding.

Conference on the receipt of an application

10. (1) To facilitate the hearing process, the Board may convene a pre-hearing conference.

- a) The pre-hearing conference may consider the following:
 - (i) a statement of the issues,
 - (ii) the necessity or desirability of amending an application for the purpose of clarification, amplification or limitation,
 - (iii) the setting of dates for the orderly exchange of records and information requests,
 - (iv) the procedures to be adopted in the proceeding,
 - (v) registration of interveners, if possible, and
 - (vi) any other matters that may aid in the simplification and disposition of the proceeding.
- b) The format for the pre-hearing conference (e.g. in-person meeting, conference call, video-conference, etc.) will be determined by the Board.

(2) The Board may direct the applicant(s) to facilitate a technical meeting for the participants for the purpose of:

- a) reviewing and clarifying an application, a submission, a response to a submission, a reply to a response to a submission, an information request or a response to an information request, or
- b) recommending procedures to be adopted with respect to the proceeding,

Production of records

11. (1) Where, in an application, intervention, motion or response to an information request, a party refers to a record on which the party intends to rely in the proceeding, that party to the proceeding shall file the record with the Board.

(2) The Board, upon motion or on its own initiative, may order any person or party in a proceeding to produce any record relating to the proceeding.

Public record

12. (1) Subject to this section, where a record is filed with the Board by a party in relation to any proceeding, the Board shall place the document on the public record.

(2) If a party wishes to keep confidential any information in a document, the party may, before filing the document, file a request for confidentiality.

(3) The request for confidentiality shall:

- a) be in writing,
- b) briefly describe
 - (i) the nature of the information in the document, and
 - (ii) the reasons for the request, including the specific harm that would result if the document were placed on the public record, and

- c) indicate whether all or only a part of the document is the subject of the request.

(4) The Board may, with or without a hearing, grant a request for confidentiality on any terms it considers appropriate:

- a) if the Board is of the opinion that disclosure of the information could reasonably be expected to:
 - (i) result in undue financial loss or gain to a person directly affected by the hearing or other proceeding or to a party, or
 - (ii) harm significantly that person's or party's competitive position, or
- b) if:
 - (i) the information is personal, financial, commercial, scientific or technical in nature,
 - (ii) the information has been consistently treated as confidential by a person or party directly affected by the hearing or other proceeding, and
 - (iii) the Board considers that the person's or party's interest in confidentiality outweighs the public interest in the disclosure of the proceeding.

(5) If the Board grants a request for confidentiality under subsection (4), a party may only receive a copy of the document if the party files an undertaking stating that the party will hold the document in confidence and use it only for the purpose of the proceeding.

(6) Nothing in this section limits the operation of any statutory provision that protects the confidentiality of information or documents.

Information requests

13. (1) A party may request another party, within the time limit set out in the process schedule, to provide information necessary:

- a) to clarify any documentary evidence filed by the other party,
- b) to simplify the issues,
- c) to permit a full and satisfactory understanding of the matters to be considered, or
- d) to expedite the proceeding.

(2) An information request under subsection (1) shall:

- a) be in writing,
- b) be identified by the inquiring party's identifying prefix designated by the Board,
- c) be directed to the party from whom a response is sought,
- d) be numbered consecutively in respect of each item of information requested,

- e) contain specific questions for clarification about the party's evidence, documents or other material that is in the possession of the party and relevant to the proceeding,
- f) set out the date on which the information request is filed, and
- g) be served, where the Board has directed a time limit, within the time limit directed by the Board.

(3) A copy of any information request directed to a party pursuant to subsection (1) shall be filed electronically with the secretary and served on all interested parties to the proceeding.

Response to information requests

14. (1) Subject to subsection (3) where an information request has been directed to a party and served on that party in accordance with the Board's directions, the party shall prepare a response that:

- a) repeats each question in the information request,
- b) provides full and adequate response to each question, and
- c) identifies the individual or individuals who were responsible for preparing the response.

(2) A copy of any information request directed to a party pursuant to subsection (1) shall be filed electronically with the secretary and served on all interested parties to the proceeding.

(3) A response under subsection (1) shall:

- a) be in writing,
- b) set out the date on which the response is filed, and
- c) be filed and served as directed by the Board.

(4) A party who is unable or unwilling to provide a full and adequate response to an information request shall:

- a) where the party objects to providing the information requested, provide a response stating the objection and setting out the grounds for the objection, or
- b) where the party contends that the information necessary to provide a response is not available, provide a response that sets out the reasons for the unavailability of such information and provide such alternative available information as the party considers would be of assistance to the party requesting the information, and
- c) file electronically with the secretary, as soon as the information is known, a copy of the response and serve a copy on all interested parties.

(5) Where the party requesting the information is unsatisfied with the response or with the reasons for a response not being provided, that party may apply to the Board for an order settling the response.

Evidence

15. (1) The Board may receive evidence by:
- a) documents or reports filed with the Board,
 - b) affidavit,
 - c) oral testimony,
 - d) oral testimony by way of conference calls or video-conferencing without the necessity of the witness being sworn or affirmed if ordered by the Board, or
 - e) any other manner the Board considers appropriate.

(2) Any party who wishes to present evidence at a public hearing shall, prior to the appearance of the witnesses and within the time limit prescribed by the Board, file electronically a copy of the proposed evidence with the secretary and serve electronically a copy of it on all parties.

(3) Pre-filed written evidence may be received in evidence at the hearing with the same force and effect as if it were stated orally by the witness, provided that the witness shall be subject to cross-examination.

(4) The Board may permit in evidence at a public hearing, in accordance with this section, the filing of:

- a) any information or evidence received in another proceeding before the Board or other provincial or federal regulatory body, or
- b) any decision, report, finding or order made by the Board or any other provincial or federal regulatory body.

Filing evidence before the hearing

16. Written evidence shall be filed before a hearing according to the process schedule issued by the Board in the proceeding.

Attendance to witnesses summonses

17. (1) The Board may, on its own initiative or at the request of a party, issue a summons requiring a person to attend the hearing at the time and place stated in the summons.

(2) The Board may require the person named in the summons to produce at the hearing documents or other things in his or her possession, control or power relating to the matters in question in the hearing that are specified in the summons.

(3) Any party served with a summons that has an objection to attending the hearing or filing a document stated in the summons may proceed for an order by way of a motion pursuant to section 19.

Amendments

18. In any proceeding the Board may, on condition or otherwise:
- a) allow any amendment to a document,
 - b) order to be amended or struck out a document or any part of a document which may tend to prejudice, embarrass or delay the fair hearing of an application on its merits, and
 - c) order any other amendment as may be necessary for the purpose of hearing and determining the issues in the proceeding.

Motions

19. (1) Any matter which arises in the course of a proceeding that requires a decision or order of the Board, shall be brought before the Board by a motion.
- (2) A motion shall be in writing and shall contain a clear and concise statement of the facts, the decision sought and the reasons for such a decision.
- (3) A motion shall be filed and served electronically on all interested parties at least two days before the motion is heard.
- (4) Any party who wishes to respond to a motion shall file and serve electronically on all parties a written answer no later than 4:00 PM on the day before the motion is to be heard.
- (5) Any document which a party may wish to submit in support of a motion or response shall accompany the notice or response and shall be filed and served electronically on all parties.
- (6) Notwithstanding subsections (2) to (5), a motion may be made at any time during the course of a public hearing and shall be disposed of in accordance with such procedures as the Board may direct.
- (7) When hearing a motion, the Board may, where it is deemed prudent and necessary, permit oral evidence in addition to any affidavit or other supporting material.

Applications to the Board

20. An application shall:
- a) contain clean and concise statement of the facts,
 - b) set forth the reason for the application,
 - c) set forth the nature of the order sought,
 - d) contain any schedule of rates or any other material relevant to the application,
 - e) be signed by the applicant or his or her representative, and

- f) state the name, address and telephone number of the applicant or of the authorized agent or representative of the applicant to whom communications shall be sent or on whom documents shall be served.

Hearing of the application

- 21. (1) Having received an application, the Board shall hold the hearing.
 - a) within 120 days of completing the pre-hearing conference, if one is held; or
 - b) within 120 days of receiving the application, if there is no pre-hearing conference.

(2) The time limits referred to in subsection (1) may be extended by the Board.

Publication of notice of hearing

- 22. (1) Where an application or any other matter is to be dealt with by means of a public hearing for which the Board issues a public notice, the applicant shall:
 - a) forthwith publish the public notice in the form approved by the Board, in the newspapers specified by the Board,
 - b) forthwith serve a copy of the public notice electronically upon such persons as the Board may direct;

- 23. (1) The information contained in an application and all other information submitted by an applicant to the Board constitutes the written evidence of the applicant and the applicant shall not, except with leave of the Board, submit additional written evidence or oral evidence.

(2) Any document purporting to have been issued by a corporation or any officer, agent or employee of a corporation for or on its behalf, may be received in evidence without calling the author as a witness.

(3) In the case of a corporation, the applicant shall make available as required by the Board such witnesses as are competent in the issues before the Board, including a senior officer to be available for questioning on policy issues and related matters.

Intervention

- 24. (1) Where a notice of a public hearing has been published, any interested person or organization may request to intervene in respect of the proceeding by filing electronically with the Board and serving electronically on the applicant, on or before the date prescribed by the Board, a written request to intervene that:
 - a) clearly and briefly describes the nature of and reasons for the proposed intervention,
 - b) states clearly the intervener's intention to appear at the public hearing and to participate in the filing and the testing of evidence, and

- c) sets out the name, mailing address and address for service and telephone number of the intervener or agent authorized to receive documents on that person's behalf.

(2) On being advised by the Board that intervener status has been awarded to a person or organization, that person or organization shall serve electronically a copy of the intervention and any supplement to the intervention on all parties.

(3) Should any party object to the intervention of any other party, such objection and challenge to the intervener status shall be made by way of a motion under section 19, prior to the commencement of the public hearing.

(4) An intervener or its counsel, are to avoid duplication of evidence.

Presentation

25. (1) Where a notice of a public hearing has been published, any interested persons or organizations who do not wish to intervene in respect of the proceeding but who wish to make their views regarding the application known to the Board may provide their views in writing to the Board in advance of the public hearing.

(2) The Board, at its discretion, may schedule a portion of the public hearing for the public to present its views on the application before the Board.

Information request

26. (1) Any party to the proceeding may address an information request relevant to the matter before the Board directed to any other party in the proceeding in accordance with section 13.

(2) Where the Board has directed a time limit, additional information requests may be addressed after the date prescribed only with leave of the Board.

Hearing of evidence

27. (1) Unless the Board otherwise directs, no written evidence may be presented at an oral hearing unless the evidence was filed in accordance with section 15.

(2) Parties may present their evidence and examine and cross-examine witnesses on matters arising from the written material filed and in accordance with directions given by the Board.

(3) A party may update or revise their evidence with leave of the Board.

Argument

28. At the conclusion of the examination of evidence at the hearing, the Board may direct that oral argument be presented and establish the time limits for it, or it may order that written argument be filed electronically with the Board and served electronically on interested parties by a certain date, or both.

Sitting and facilities

29. (1) The Board shall hold hearings at times and in places in Yukon as it chooses and shall conduct its proceedings in a manner convenient for the timely and effective dispatch of the application.

(2) All sittings of the Board to hear applications are open to the public.

Issuance of an order

30. (1) On any application, the Board may make an order granting the whole or part only of the application or may grant such further or other relief in addition to or in substitution for that applied for, as fully and in all respects as if the application had been for such partial, further or other relief.

(2) The Board shall provide written reasons for the orders it issues at the time of the issuing of such orders or as soon thereafter as is reasonably practicable.

Review and Variance of Board Orders

31. (1) Pursuant to section 62 of the *Act*, the Board will consider the following as grounds for review:

- a) the Board has made an error in jurisdiction;
- b) the Board has made an error in fact or law;
- c) there has been a fundamental change in circumstances or facts since the decision or order;
- d) a basic principle has not been raised in the original proceedings;
- e) a new principle has arisen as a result of the decision nor order;
- f) such other grounds as the Board may determine require a review.

(2) The application for review should as a minimum set forth the following:

- a) the grounds upon which the application is based;
- b) a brief statement of facts supporting the alleged ground(s) for review;
- c) if new evidence is sought to be filed, a statement of the nature and purpose of the evidence;
- d) any further matter that the applicant believes will assist the Board in reaching a decision to grant a review.

(3) The Board will use a two-phase system for applications for review. Such a process enables certain applications to be dealt with expeditiously and economically. An application for review will be subject to an initial screening phase

where the applicant must establish a prima facie case sufficient to warrant full consideration by the Board. In the first phase, the Board will assess an application having regard to some or all of the following questions:

- a) Should there be a review by the Board?
- b) If there is to be a review, should the Board hear new evidence and should the parties be given the opportunity to present evidence?
- c) If there is to be review, should it focus on the items from the application for review, a subset of those items or additional items?

(4) Upon receipt of an application for review, the Board will invite registered parties to comment on the application for review regarding the questions set out in subsection (3) for the first phase of the review and the applicant for review may respond to the comments received.

(5) In the case of an alleged error, in order to advance to the second phase of the process, the application must show that:

- a) the claim of error is substantiated on a prima facie basis; and
- b) the error has significant material implications.

(6) If there is a second phase, then the Board will hear full arguments on the merits of the application.

Costs

32. (1) Pursuant to section 56 of the *Act*, the Board may award costs in accordance with Schedule 1.

(2) No costs shall be awarded with respect to the first phase of an application for review outlined in section 31.