

1995-2

Whitehorse, Yukon

YUKON UTILITIES BOARD

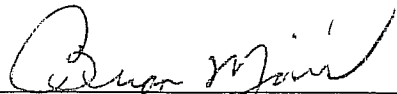
ORDER 1995 - 2

PUBLIC UTILITIES ACT

Pursuant to Section 10, the Board hereby orders as follows:

The attached Rules of Practice shall be the rules governing the conduct of hearings and applications to the Board.

DATED at Whitehorse, in the Yukon Territory, this 10 day of November A.D. 1995.



Mr. Brian Morris, Chair

PUBLIC UTILITIES ACT

YUKON UTILITIES BOARD RULES OF PRACTICE

Definitions

1. In these Rules:

"Act" means the *Public Utilities Act*, RSY 1986, Chapter 143, as amended from time to time;

"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 party who has filed an application with the Board under the *Act* or the *Regulations*;

"application" means a written request to the Board to exercise its statutory power in respect of matters referred to in the application;

"Board" means the Yukon Utilities Board;

"complaint" means a written request to the Board to exercise its statutory power in respect of matters referred to in the complaint;

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

"intervenor" means a party 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 Rule 24;

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

"party" means either an applicant or an intervenor;

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

"presenter" means any person who makes an unsworn or unaffirmed 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;

"secretary" means the secretary or acting secretary of the Board;

"record" includes books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by graphic, electronic, mechanical or other means, but does not include a computer program or any other process or mechanism that produces records.

Application of Rules

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

(2) In any proceeding, the Board may dispense with, vary or supplement any of the provisions of these Rules, but must give reasons to the parties.

Direction on procedure

3.(1) In any proceeding, the Board may issue directions on procedure which will govern the conduct of that proceeding and which, subject to subsection 2(2), must be consistent with these Rules. These directions may include time limits for compliance with a Board direction or may extend time limits previously established by the Board.

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

(3) Any person making an application to the Board shall file an application, in writing, to the Board. 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

4. Filing of any record with the Board shall be effected at the Board's address for delivery by personal delivery, by registered mail, by telefacsimile, by electronic data interchange, or otherwise as the Board may direct.

Affidavits

5.(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 is made on the basis of information and belief, the source of the information and the grounds of belief shall be set out therein.

(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

6.(1) The Board may direct that a proceeding or complaint 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.

(2) Where the Board considers it prudent or necessary, it may permit oral evidence and oral submissions in proceedings and inquiries before it.

Failure to comply

7. Where a party to a proceeding or inquiry 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 appropriate Order as to costs or such other steps as the Board considers just and reasonable.

Formulation of issues

8. In any proceeding,

(a) where the records filed with the Board do not sufficiently address the matters at issue in the proceeding; or

(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;

the Board may formulate issues which shall be considered by it in the proceeding and, for this purpose, may direct parties to propose issues which, if not agreed to by all parties, shall be settled by the Board.

Conferences on the receipt of an application

9.(1) To facilitate the hearing process the Board may convene a pre-hearing conference to consider:

(a) a statement of the issues;

(b) the necessity or desirability of amending an application for the purpose of clarification, amplification or limitation;

(c) the setting of dates for the orderly exchange of records and information requests;

(d) the procedures to be adopted in the proceeding;

(e) registration of intervenors, if possible; and

(f) any other matters that may aid in the simplification and disposition of the proceeding.

(2) Where in the opinion of the Board the amount, level of detail and complexity of material so warrants, a non-evidentiary technical conference may be held for the purpose of considering:

- (a) a tutorial presentation for interested parties;
- (b) a discussion or workshop style conference to gain an understanding or clarification on a matter; or
- (c) any other presentation or conference style arrangement that will assist the understanding to the Board and interested parties.

Production of records

10.(1) Where in an application, intervention, motion or response to an information request, a party refers to a record which the party intends to rely on in the proceeding, any party to the proceeding may request that the record be produced for inspection and copying.

(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.

(3) Any party who fails to comply with an order under subsection (2) within 10 days from the receipt thereof shall not thereafter be at liberty to put the requested record in evidence in the proceeding without leave of the Board.

Confidentiality

11.(1) Where a record is filed with the Board by a party in relation to any proceeding, the Board shall, subject to subsection (2), place the document on the public record.

(2) The Board may receive information in confidence when there is no public right to the information under the *Access to Information Act*.

(3) Where disclosure of any record is refused due to a claim for confidentiality and a claim for public disclosure of such documents has been made, the Board shall hear such claim on a motion made under Rule 19.

(4) For purposes of hearing a motion in respect of a disputed claim under subsection (3), the Board may examine the record or other evidence in question to ascertain whether or not the claim for confidentiality or the claim for public disclosure will be sustained.

Information requests

12(1) Where, in any proceeding, the Board permits information requests to be directed to a party for the purpose of a satisfactory understanding of the matters to be considered, such information requests shall be identified by the inquiring party's identifying prefix designated by the

Board and be:

- (a) addressed to the party from whom the response is sought;
- (b) numbered consecutively in respect of each item of information requested;
- (c) relevant to the proceeding; and
- (d) served, where the Board has directed a time limit, within the time limit directed by the Board.

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

Response to information requests

13.(1) Subject to subsection (2), 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, subject to direction by the Board as to appropriate time limits:

- (a) provide a full and adequate response to each information request on a separate page or pages, or, by agreement between the parties, on a computer disk or diskette; and
- (b) file with the secretary and serve on all parties to the proceeding a written copy of the responses.

(2) 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 with the secretary, as soon as the information is known, a copy of the response and serve a copy on all interested parties.

(3) 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.

(4) Where the settling of a response to an information request is required, the Board may orally or in writing direct all parties:

- (a) to appear before the Board or a member of the Board at a specified time and place for a conference; or

(b) to submit in writing their position and views on the matter for the purpose of assisting the Board.

Evidence

14.(1) The Board may receive evidence by:

- (a) documents or reports filed with the Board;
- (b) affidavit;
- (c) oral testimony if ordered by the Board;
- (d) oral testimony by way of conference calls 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 a copy of the proposed evidence with the secretary and serve 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 where the Board grants leave for cross-examination.

(4) The Board may issue commissions to take evidence outside of the Yukon and may make all proper orders for that purpose and for the return and use of the evidence so obtained.

Evidence in other proceedings

15. Information or evidence received in another proceeding before the Board or before any other provincial or federal regulatory body or any report, decision, finding or order made in respect thereof may, by leave of the Board, be received as evidence in a proceeding.

Filing evidence before the hearing

16. The procedure for filing written evidence before a hearing (pre-filing evidence) shall be within whatever time limits directed by the Board and shall be as follows:

- (a) an applicant shall provide pre-filed written evidence in support of its application;
- (b) intervenors' witnesses and independent witnesses shall provide pre-filed written evidence in response to the applicant's pre-filed written evidence; and
- (c) an applicant may provide written pre-filed rebuttal evidence to address issues raised in the intervenors' or independent witnesses' pre-filed written evidence.

Attendance of witnesses summonses

17.(1) The Board or party who requires the attendance of a person as a witness before the Board may serve the person with a summons requiring him or her to attend the hearing at the time and place stated in the summons. The summons may also require the person to produce at the hearing the 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.

(2) Any party served with a summons who 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 Rule 19.

(3) The summons for a witness to produce a document or to attend a hearing shall be signed by the secretary of the Board.

Amendments

18. In any proceeding the Board may, on condition or otherwise:

(a) allow any amendment to any document;

(b) order to be amended or struck out any document or any part thereof 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 real questions and issues in the proceeding.

Motion

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 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 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 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.

Application to the Board

20. An application shall:

- (a) contain a clear and concise statement of the facts;
- (b) set forth the reasons for the application;
- (c) set forth the nature of the order sought;
- (d) shall submit with the application any schedule of rates or any other material relevant to the application;
- (e) contain all minimum filing requirement information prescribed by the Board;
- (f) be signed by the applicant or his or her authorized agent or representative; and
- (g) 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 secretary, in the newspapers specified by the Board;
- (b) forthwith serve a copy of the public notice upon such persons as the Board may direct;

(c) provide a notice of the forthcoming public hearing to each subscriber or customer in such monthly bill or bills as the Board may direct;

(d) provide for radio and TV public announcement throughout the Yukon of a forthcoming public hearing; and

(e) publish, in two issues of a newspaper, a further public notice, if so directed by the Board.

(2) The applicant shall file a report of publication and notice with the secretary.

(3) The notice must be approved by the Board before publication and shall state the time and place of the hearing and any pre-hearing conference and shall contain a clear and concise statement of the substance of the application, including any proposed rate changes in sufficient detail and in plain language for the public's clear understanding of the substance of the application.

Applicant's evidence

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, be at liberty to 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 with the secretary and serving 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 intervenor'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 intervenor or agent authorized to receive documents on that person's behalf.

(2) Before determining whether to award intervenor status to any person, the Board will review the written request for intervention and may meet with the person or organization requesting intervenor status to determine:

- (a) a clear understanding of the issues to be addressed and purpose for the requested intervention;
- (b) any relevant information that may be useful in explaining or supporting the views of the person requesting intervention; and
- (c) the extent of the requested intervention in the information request, evidential and argument procedures.

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

(4) Should any party object to the intervention by any other party, such objection and challenge to the intervenor status shall be made by way of a motion under Rule 20, prior to the commencement of the public hearing.

(5) Unless the Board directs otherwise, the applicant shall serve each intervenor with:

- (a) a copy of the application or other document initiating the proceedings;
- (b) any pre-filed written evidence or material submitted to the Board; and
- (c) any procedural order issued by the Board.

(6) An intervenor or its counsel are to avoid duplication of evidence.

Observer status

25.(1) Where a notice of a public hearing has been published, any interested person or organization may request observer status in the proceeding by filing with the secretary and serving on the applicant, on or before the date prescribed by the Board, a written request that

- (a) clearly and briefly describes the nature of their interest in the application; and
- (b) sets out the person's or organization's name, telephone number and mailing address for delivery of documents.

(2) Before determining whether to award observer status to any person or organization, the Board will review their request and may meet with them to determine whether they have, or represent a group of persons who have, an interest in the application sufficient to justify conferring on them the benefit of observer status.

(3) Observer status entitles the observer to

(a) be present at the hearing; and

(b) receive a copy of the Board's decision.

(4) An observer may apply at any stage of the proceeding to be granted intervenor status and the Board may grant them intervenor status if

(a) new circumstances or issues have emerged that did not exist or could not reasonably have been expected when the observer got observer status, and

(b) the observer would otherwise qualify under for intervenor status under Rule 24.

Presentation

26. 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 or may appear during that portion of the public hearing that has been set aside by the Board to hear the views of presenters.

Information request

27.(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 Rule 12.

(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 or with the consent of the party to whom the information request is addressed.

Hearing of evidence

28.(1) At hearings, parties will be afforded an opportunity to present their evidence in writing and to submit written information requests and response to information requests in writing. If the Board permits oral evidence, parties will be afforded an opportunity to present their evidence and to examine and cross-examine witnesses on matters arising from the written material filed and in accordance with directions given by the Board.

(2) The written evidence of an intervenor shall be deemed to include its pre-filed evidence and any responses to information requests by that intervenor.

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

Argument

29. 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 written argument to be filed with the Board and served on interested parties by a certain date, or both.

Sittings, facilities and translation

30.(1) The Board shall hold hearings at times and in places in the 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.

The record

31. Oral evidence or submissions need not be recorded in written form but the Board shall cause electronic sound recordings to be made of all statements made orally at its public hearings where the Board permits a public hearing and shall make such recordings as well as all relevant documents available on reasonable conditions for inspection or copying by any person who so requests and by any Court exercising jurisdiction over the Board. Anything filed with the Board for a proceeding and the evidence of any witness called together with exhibits and final submissions of the parties shall form part of the record of the Board's proceedings.

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.

Costs

33. Pursuant to section 56 of the *Act*, the Board may award costs in accordance with Schedule I.

SCHEDULE I

SCALE OF COSTS

Pursuant to section 56 of the *Public Utilities Act* the Board may order to whom or by whom any costs incidental to any proceeding before the Board are to be paid and may fix the costs to be paid.

The Board welcomes and relies upon informed and effective intervention from intervenors representing different classes of customers of a utility to test the various aspects of the applicant's rate case. Any individuals or organizations including municipalities, who wish to intervene in any proceeding and who may have substantially common interests, are encouraged to combine their intervention to reduce both hearing time and aggregate costs.

Before exercising its statutory discretion to award costs, the Board will consider such questions as the effectiveness of the party's participation, its relevancy to the issues, and whether the costs were reasonably and prudently incurred, and whether the party has been diligent in the efficient presentation of its position.

The Board's primary objective is to ensure an efficient and expeditious hearing process and to avoid duplication. If duplication is found to exist, costs may be reduced or disallowed.

The Board may also disallow or reduce costs if a party to a proceeding has failed to comply with a direction of the Board, Board order or has embarked on irrelevant or unreasonable enquiries.

The Board may also reduce or disallow costs where a party to a proceeding has not been responsive or acted unreasonably in failing to respond to an information request.

The Board may also disallow or reduce costs where a party has made irrelevant or unreasonable submissions to the Board not relevant to the matters in issue in the proceedings.

The Board may review whether or not an expenditure by a party to the proceeding is prudent and reasonable and if it is found that it is not prudent or reasonable, the Board may disallow or reduce disbursements, consultant's fees and solicitor's fees.

Where duplication is found to exist the Board may limit consultant's fees or solicitor's fees to one consultant or solicitor notwithstanding that more than one party is involved.

To facilitate the administration of claims for costs, the Board has prescribed this scale of costs under which costs of and incidental to any proceeding before the Board may be taxed or assessed.

This scale will be applicable to all hearing costs incurred on or after September 1, 1995 and will remain in place until revised by the Board.

The Board's objective in prescribing the scale of costs is to ensure that the costs of hearings are reasonable, relative to the matters involved. Costs are generally awarded against the utility, and charged to the customers of the utility throughout the utility's rates. For this reason, the Board considers that the costs claimed by parties to a proceeding must be subject to stringent scrutiny.

The fees and disbursements in the scale of costs are not intended to prescribe or limit the fees which any party may wish to pay when choosing to retain counsel or consultants. The scale of costs represents what is, in the opinion of the Board, a fair and reasonable contribution by consumers to provide any interested party with adequate, competent and professional assistance in making an effective submission to the Board. In a case where a party can advance persuasive argument that the level of consumer contribution is inadequate given the complexity of the case, the Board may adjust the scale to meet unique circumstances.

This scale sets general principles and amounts which are to apply to the awarding of costs. Costs are in the discretion of the Board and claims will be assessed particularly on the usefulness of the party's participation in testing the utility's case and thereby helping the Board discharge its basic mandate to fix just and reasonable rates for all customers. These fees and charges are effective for all hearings commencing on or after September 1, 1995.

1. Professional fees

(a) Legal Counsel - Maximum fee per each hour - \$225.00

The fee information must include copies of all fee billings and show preparation, required attendance and argument/reply times in detail. In addition a retainer letter explaining the need for counsel must be provided at, or within one month of, the applicable pre-hearing conference.

The Board will review the number of hours claimed by legal counsel having regard to the circumstances and complexity of each proceeding, the participation of the counsel and whether and when their attendance was required.

The fee will be deemed to include and cover all overhead charges implicit in the normal operation of a professional office including meals. Exceptions are described under disbursements following.

(b) Consultants - Maximum fee per each hour - \$225.00

The maximum consultant's fee shall also be subject to considerations similar to those expressed above for legal counsel fees, and will require similar documentation. The retainer letter should include a description of the areas on which the consultant was engaged to contribute to the proceedings.

2. Disbursements

(a) Subject to tests of reasonableness and the mandatory submission of appropriate supporting vouchers, the Board will consider whether to order reimbursement of the reasonable and prudent actual costs incurred for:

(1) Transcript.

(2) Accommodations - during hearing days only, and excluding meals and other charges.

(3) Airfare, at economy or less, to and from the hearing, applicable only when attendance is required.

(b) The Board will consider reimbursement of the reasonable actual costs incurred for other charges directly related to the preparation and circulation of evidence, argument and reply provided they are fully explained and, where appropriate, supported by vouchers:

(1) Courier and postage.

(2) Computer charges (access to databases, etc.) for access external to the applicant's operations.

(3) Long distance telephone and fax.

(c) Subject to tests of being reasonably and necessarily incurred, the Board will consider reimbursement of the following on the basis shown:

(1) Photocopying - At claimant's cost or \$.10/copy whichever is the lesser.

(2) Road travel - A mileage allowance of \$.27/kilometre may be claimed by participants living in the Yukon but not in the locale where the hearing is held. This is payable only for the hearing days.

There will be no reimbursement for travel costs of local participants.

There will be no reimbursement of taxi fares and parking charges except for necessary costs (taxi, parking, etc.) for transportation from and to airports with respect to attendance at hearings.

(d) All disbursements not identified under 2(a), 2(b), or 2(c) above, will be deemed to be normal overhead costs recovered in the fee for services prescribed in 1 above.

If the scale requires disbursement vouchers and either no vouchers or inadequate vouchers are submitted, the claimant will be notified by a deficiency letter issued by the Board. If the claimant fails to respond by the date specified in the deficiency letter, the claim will be regarded as withdrawn, and will not be covered by a payment order.

3. Intervenorors

The Board encourages intervenors with similar interests to combine their interventions. Individual intervenors accredited under section 24 who provide the Board with a constructive view on a particular regulated part of a utility's operations will in the Board's discretion be eligible for reimbursement of their reasonable disbursements in accordance with the scale above. Intervenorors participating generally, throughout proceedings will have any claims for costs assessed on their own merits. The Board will not approve an attendance allowance.