

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, other than a complaint made under section 44 of the Act, to the Board to exercise its powers in respect of matters referred to in the application;

“Board” means the Yukon Utilities Board;

“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 filing” means filing an application or any other document in a proceeding by email or as otherwise directed by the Board;

“hearing” includes an oral hearing whether in person or by videoconference, and a written hearing, in a proceeding before the Board;

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

“intervenor” means a person, other than the applicant, who has applied for intervenor status in a proceeding and who intends to participate in the production and testing of evidence and who has been granted intervenor status by the Board;

“letter of comment” means an unsworn or unattested statement to the Board on an application in a proceeding;

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

The definition makes clear that a complaint under section (s.) 44 of the Act is not an application to which the Rules of Practice apply.

This new definition reflects the wider manner in which information can be documented.

This new definition allows the Board to support various electronic means of filing as they become available. At present, email is the only means of filing.

This new provision clarifies that a hearing can be in person or conducted solely through filing evidence and written submissions. The Board’s ability to hold an exclusively written hearing is set out at s. 7 of the existing Rules of Practice.

This definition now clarifies that an intervenor’s participation in a hearing has to be approved by the Board.

This new definition relates to situations where members of the public wish to provide information in a hearing that will not be evidence or be subject to cross-examination. The definition relates to s. 23 of these draft rules and because of that new provision, the definition of “presenter” in the existing Rules of Practice has been deleted.

“oral hearing” means a hearing at which the parties or their representatives attend before the Board in person or by videoconference;

This definition sets out the fundamental nature of an oral hearing.

“party” means either an applicant or an intervenor;

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

“proceeding” means a process to decide a matter brought before the Board, other than a complaint made under section 44 of the Act;

“process schedule” means the schedule setting out the process steps for a proceeding;

“representative” means legal counsel or agent of a party;

“scale of costs” means the scale of costs set out in Appendix A;

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

“written hearing” means a hearing held by means of the exchange of documents.

As noted above, the Board can hold a hearing through the exchange of written documents.

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 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 extend or abridge a time limit specified in these rules or a Board 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 Board direction.

Filing and directions on procedure

4. (1) An application shall be in writing and submitted to the secretary by electronic filing.
- (2) In any proceeding, the Board may issue directions on procedure and a process schedule which will govern the conduct of that proceeding.

- (3) The Board may issue directions with respect to serving an application on persons.
- (4) 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.

Filing with the Board and service of documents

- 5. (1) Any document to be filed with the Board shall be submitted to the secretary by electronic filing.
- (2) The Board may request a hard copy of any document filed electronically.
- (3) 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, or by electronic filing to the address given by the person or party, or
 - (c) by such other method as the Board directs.

Affidavits

- 6. (1) A party may submit an affidavit 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 in the affidavit.
- (3) Where an affidavit has been filed with the Board, a party may apply to the Board during a proceeding to cross-examine the party who filed the affidavit.

Failure to comply

- 7. Where a party 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 proceeding including disallowance of evidence, making an order as to costs or such other steps as the Board considers fair and reasonable.

Pre-hearing conference or technical meeting

8. (1) To facilitate the hearing process, the Board may convene a pre-hearing conference which may consider the following:
- (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) The Board determines the format for the pre-hearing conference (such as in-person meeting, videoconference, etc.).
- (3) The Board may direct the applicant(s) to facilitate a technical meeting or process meeting for the participants for the purpose of:
- (a) reviewing and clarifying an application, document or issues relevant to a proceeding, or
 - (b) recommending the process, procedures and schedule to be adopted with respect to the proceeding.

This new provision sets out some of the authorities of the Board to promote a smooth and efficient hearing process, and the considerations that the Board must take into account when exercising those authorities. The substance of s. 8 was previously set out in sections 9 and 10 of the existing Rules of Practice.

Production of documents

9. (1) Where, a party refers to a document on which the party intends to rely in the proceeding, that party shall file the document 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

10. (1) Subject to this section, where a party files a document with the Board in a 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 reasonable or necessary if the Board determines that:
 - (a) granting the request is necessary
 - (i) to prevent a serious risk to an important public interest, including a commercial interest, because reasonable alternative measures will not prevent the risk; or
 - (ii) to prevent the disclosure of information that is personal, financial, commercial, scientific or technical in nature and the information has been consistently treated as confidential by a person or party directly affected by the hearing or other proceeding, and
 - (b) the benefits of granting the request outweigh its harmful effects, including the effects on the public interest in open and accessible proceedings.
- (5) If the Board grants a request for confidentiality under subsection (4), a party may receive a copy of the document only 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

- 11. (1) A party may request that another party, within the time limit set out in the process schedule, provide information necessary to:
 - (a) clarify any documentary evidence filed by the other party,
 - (b) clarify or simplify the issues,

- (c) permit a full and satisfactory understanding of the matters to be considered, or
 - (d) 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 party shall submit to the secretary by electronic filing any information request directed to another party and serve it on all parties to the proceeding.
- (4) Leave of the Board is required to make information requests after the date prescribed in the process schedule.

Response to information requests

12. (1) Subject to subsection (3), the party who receives an information request shall prepare a response that:
- (a) repeats each question in the information request,
 - (b) provides a full and adequate response to each question, and
 - (c) identifies the individual or individuals who were responsible for preparing the response.
- (2) A response under subsection (1) shall:
- (a) be in writing,
 - (b) set out the date on which the response is filed, and
 - (c) be submitted to the secretary by electronic filing and served on all parties.

- (3) 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 by electronic filing with the secretary, as soon as the information is known, a copy of the response and serve a copy on all 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 respecting the response.

Evidence

- 13. (1) The Board may receive evidence by:
 - (a) documents filed with the Board,
 - (b) affidavit,
 - (c) oral testimony,
 - (d) oral testimony by videoconference 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 an oral hearing shall, prior to the appearance of the witnesses and within the time limit prescribed by the Board, file by electronic filing 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 oral 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 in a proceeding, 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.

Written evidence

14. (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 may submit additional evidence, in accordance with the process schedule or with leave of the Board.
- (2) Any document issued by a corporation or any officer, representative or employee of a corporation for or on its behalf may be received in evidence without calling the author as a witness.
- (3) 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.

This new section provides guidance as to what constitutes written evidence and when witnesses are or are not required to be available to testify in respect of written evidence.

Filing evidence before an oral hearing

15. Written evidence shall be filed before an oral hearing according to the process schedule issued by the Board in the proceeding.

Summons to witnesses

16. (1) The Board may issue a summons requiring a person to attend an oral 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 oral hearing documents in their possession, control or power relating to the matters in question in the proceeding that are specified in the summons.
- (3) Any party served with a summons that has an objection to attending the oral hearing or filing a document identified in the summons may file a motion for an order to vacate the summons.

Amendments

17. The Board may:
- (a) allow an amendment to a document,
 - (b) order the amendment or striking out of a document or any part of it if the document or any part of the document tends to prejudice or embarrass a party, 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

18. (1) Any matter which arises in 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 submitted to the secretary by electronic filing and served on all parties.
 - (4) Any party who wishes to respond to a motion shall file a written answer with the secretary and serve it by electronic filing on all parties.
 - (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 submitted to the secretary by electronic filing and served on all parties.
 - (6) The Board may, where it deems prudent and necessary, permit oral evidence on a motion, in addition to any affidavit or other supporting material.

Applications to the Board

19. An application shall:
- (a) contain a clear and concise statement of the facts,
 - (b) set out the reason for the application,
 - (c) set out a description of the approval, order or relief being applied for,
 - (d) contain any schedule of rates or any other material relevant to the application,
 - (e) be signed by the applicant or their representative, and
 - (f) state the name, address, email and telephone number of the applicant or of the representative of the applicant to whom communications shall be sent or on whom documents shall be served.

Hearing of the application

20. (1) Having received an application, other than a complaint under section 44 of the Act, the Board shall hold a 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 proceeding

21. Where the Board issues a notice of a proceeding, the applicant shall:
- (a) publish the notice as directed by the Board,
 - (b) serve a copy of the notice by electronic filing as directed by the Board.

Intervention

22. (1) Where a notice of a proceeding has been published, any person may request to intervene in respect of the proceeding by submitting to the secretary by electronic filing, on or before the date prescribed by the Board, and serving by electronic filing on the applicant, a written request to intervene that:
- (a) clearly and briefly describes the nature of and reasons for the proposed intervention,
 - (b) clearly states the intervenor's intention to participate in the proceeding, and
 - (c) sets out the name, mailing address and email, of the intervenor or representative authorized to receive documents on that person's behalf.
- (2) On being advised by the Board that intervenor status has been awarded, that person shall serve by electronic filing a copy of the intervention and any supplemental documents to the intervention on all parties.
- (3) Should any party object to the intervention of any other party, such objection and challenge to the intervenor status shall be made by a motion.
- (4) An intervenor or their representative are to avoid duplication of evidence.

Letter of comment

23. (1) Where a notice of an application has been published, any persons who do not wish to intervene in respect of the proceeding but who wish to make their views known about the application may submit a statement setting out their views on the application to the secretary by electronic filing.
- (2) The Board, at its discretion, may schedule a portion of an oral hearing for the public to present its views on the application before the Board.

This proposed provision corresponds to s. 25 in the existing Rules of Practice, but reading it in concert with the new definition of “letter of comment” clarifies that the statement is unsworn and is not evidence in the proceeding

Adjournments of oral hearing

24. (1) The Board may adjourn an oral hearing on its own initiative, or upon motion by a party, and on conditions the Board considers appropriate.
- (2) **Parties** shall file and serve a motion to adjourn an oral hearing at least 10 calendar days in advance of the scheduled date of the hearing.

The modernization of language in s. 11 of these draft Rules of Practice means that s. 16 of the previous Rules of Practice no longer needs to be included.

Hearing of evidence

25. (1) Unless the Board otherwise directs, no written evidence may be presented at an oral hearing unless the evidence was filed in accordance with these rules.
- (2) Unless otherwise directed, a witness at an oral hearing must be examined orally on oath or affirmation.
- (3) In an oral hearing, parties may present their evidence and examine and cross-examine witnesses on matters arising from the documents filed and in accordance with directions given by the Board.
- (4) In a written hearing, a party may update or revise their evidence only with leave of the Board.

Aids to question a witness at an oral hearing

26. (1) Unless otherwise directed, a party, who intends to use a document that has not been filed in the proceeding as an aid to question a witness at an oral hearing, must provide a copy of that aid to question a witness to the witness, or the witness’ representative, no less than 24 hours before the witness is to be questioned on the aid.
- (2) If a document to be used as an aid to question a witness has five or more pages, the party providing the document must highlight all passages in the document that the party intends to question the witness on.
- (3) No party shall file as an exhibit an aid to question a witness until the Board so directs.

This new section clarifies the rules in effect when a party who is questioning a witness at an oral hearing wants to use a previously unfiled document to support the line of questioning. The rules are designed to help ensure that witnesses are neither surprised nor confused by a document that they had no previous knowledge of.

Argument

27. (1) At the conclusion of the examination of evidence at an oral 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 submitted to the secretary by electronic filing with the Board and served on all parties by a certain date, or both.
- (2) For a written hearing, argument is submitted, in accordance with the process schedule, to the secretary by electronic filing and served on all parties.

Oral hearings

28. (1) The Board shall hold oral hearings at times and in places in Yukon as it chooses and shall conduct its proceedings in a timely and effective manner.
- (2) Subject to subsections (3) and (4), all oral hearings are open to the public.
- (3) Despite subsection (2), if the Board considers it necessary to prevent the disclosure of personal, financial or commercial information or other information because, in the circumstances, the need to protect the confidentiality of the information outweighs the desirability of an open hearing, then the Board shall conduct all or part of the oral hearing in private.
- (4) If all or any part of an oral hearing is to be held in private, a party may only attend that portion of the hearing in accordance with the directions of the Board.

This section has been expanded to clarify that while the general rule is that Board hearings are carried out in public, there is a potential exemption when the standard set in subsection (3) is met. This provision corresponds to s. 10, which relates to written evidence on the public record.

Media coverage at oral hearings

29. (1) Radio, television or other recording by media of an oral hearing which is open to the public may be permitted on conditions the Board considers appropriate, and as directed by the Board
- (2) The Board may refuse to permit the recording of all or any part of an oral hearing if, in the opinion of the Board, such coverage would inhibit specific witnesses or disrupt the proceeding in any way.

This new section explicitly allows for media presence at and recording of a hearing if permitted by the Board. Although the Board had previously and regularly permitted media to attend hearings, that was on an ad hoc basis.

Complaints

30. (1) The Board may set out the process for a complaint made under section 47 of the Act.
- (2) If the Board considers that a settlement of a complaint made under section 47 of the Act may be achieved and all parties to the complaint agree, the Board may direct that a mediation take place.

The volume of complaints received by the Board has greatly increased over the last several years. This new section clarifies that the Board can set out the process for dealing with a complaint under s. 47 of the Act, and also specifies who will pay the cost of mediation that is allowed by the Act.

- (3) Any costs associated with a mediation of a complaint made under section 47 of the Act are paid as agreed by the parties.

Review of Board decisions

31. (1) An application for review of a decision of the Board, other than a decision on a complaint, must be filed within 30 days of the issuance of the decision, unless otherwise authorized by the Board.
- (2) 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; or
 - (c) there has been a fundamental change in circumstances or facts since the decision or order was issued.
- (3) The application for review shall at a minimum include 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 on the review.
- (4) Upon receipt of an application for review, the Board may invite parties to comment on the application for review and the applicant for review may respond to the comments received.
- (5) The Board uses a two-stage process for applications for review:
- (a) at the first stage, the Board determines the preliminary issue as to whether a review should be granted, in whole or in part.
 - (b) if a review is granted, then the application moves to the second stage in which the Board will hear the application on its merits.
- (6) In the first stage, the Board determines whether the applicant for review has raised relevant issues material enough to warrant a review of the decision on the merits. **Considerations** may include:
- (a) whether any alleged errors are in fact errors as opposed to a disagreement regarding the weight the Board applied to particular facts or how it exercised its discretion;

This section contains several new provisions. It applies to all Board decisions except complaints because the Act does not give the Board the power to issue a binding order in respect of a complaint, or effect a unilateral settlement of a complaint. It also sets out a clear time period in which any application for review must be brought. Applications for review need to be brought quickly, because parties have a right to rely on Board decisions and to act in accordance with them. If applications for review could be brought at any time, decisions will have been made in good faith by parties, the foundations of which may later be varied.

This new subsection gives greater clarity to the considerations that the Board will take into account when determining whether there should be a review of a decision on the merits. This section is similar to that set out in the Rules of Practice for other Canadian utility tribunals.

- (b) whether any alleged errors or new facts, if proven, could reasonably be expected to result in a material change to the decision;
 - (c) whether any alleged error, if proven, has significant material implications;
 - (d) whether any new facts relating to a change in circumstances were within the control of the applicant for review;
 - (e) whether any new facts, if proven, could have reasonably been placed on the record of the proceeding to which the application for review relates.
- (7) If there is a second stage, then the Board will hear the application for review on its merits and decide whether to confirm, cancel, suspend or vary the decision.

Correction of errors

32. (1) The Board may, without notice, correct typographical, spelling and calculation errors and other similar types of errors made in any of its rulings, orders, decisions or directions.
- (2) The Board may, no later than 60 days from the date that the Board issued a decision or order and without notice, correct typographical, spelling and calculation errors and other similar types of errors and post the corrected decision or order on its website.
- (3) The Board may issue a corrigenda decision to correct an error in a decision or order that is not in the nature of a typographical, spelling, calculation error or other similar type of error. It may also issue a corrigenda decision to correct typographical, spelling, calculation errors or other similar types of errors in a decision or order that are detected more than 60 days from the date of issuance of the decision or order. The corrigenda decision will indicate the changes required and attach an amended form of the original decision.

This new provision clarifies the Board's authority to correct minor errors such as typos or spelling and calculation errors. It also puts a time limit on the period in which that correction can happen and specifically allows the Board to issue corrigenda within that period.

Costs

33. (1) Pursuant to section 56 of the Act, the Board may award costs.
- (2) The Board shall exercise its discretion to award costs in accordance with these rules and the scale of costs set out in Appendix A.
- (3) No costs shall be awarded with respect to the first stage of an application for review.

Costs awards definitions

34. For purposes of determining a costs award,
“day” means calendar day,

“participant” means an applicant or intervenor in a proceeding,

“represented intervenor” means an intervenor that has retained the assistance of legal counsel, or a consultant, analyst or expert,

“unrepresented intervenor” means an intervenor who has not retained the assistance of legal counsel, or a consultant, analyst or expert.

Scale of costs

35. (1) The scale of costs represents a fair and reasonable tariff to provide any participant with adequate, competent and professional assistance in making an effective submission before the Board.

(2) In a case where a participant can advance persuasive argument that the scale of costs is inadequate given the complexity of the case, the Board may award an amount greater than stated in the scale to address such unique circumstances.

Costs claims

36. (1) A participant may apply in writing to the Board within 30 days after the issuance of a Board decision in a proceeding for an award of costs incurred in that proceeding by filing a costs claim which explains:

- (a) what interests they represent,
- (b) what tasks they have undertaken and dates on which they were undertaken,
- (c) why they appeared before the Board and issues addressed before the Board,
- (d) what efforts were expended to avoid duplication as between participants or as between counsel, experts and consultants, and
- (e) why the costs submitted are reasonable.

(2) If a participant claims professional fees in their costs claim, the costs claim must include a copy of the retainer of services, a statement(s) of account reflecting the professional fees being claimed, and legible receipts for certain expenses where required.

- (3) The onus is on the participant to provide sufficient information for the Board to effectively assess its claim and must address the specifics of the proceeding.
- (4) A costs claim must include the following completed forms which are available on the Board's website:
 - Form 1 – Summary of total costs claimed
 - Form 2 – Summary of professional fees claimed
 - Form 3 – Summary of disbursements claimed
 - Form 4 – Affidavit of fees and expenses claim which may be signed by the participant or legal counsel for the participant.

Comments on costs claims

37. Participants may comment on costs claims filed by other participants within 14 days of the filing with the Board of a costs claim.

Costs award

38. (1) In exercising its discretion to award costs, the Board may award costs, in accordance with this scale of costs, to a participant if the Board is of the opinion that:
- (a) the costs are reasonable, prudent, and directly and necessarily related to the proceeding, and
 - (b) the participant acted responsibly in the proceeding and contributed to a better understanding of the issues before the Board.
- (2) In determining the amount of costs to be awarded to a participant, the Board may consider whether the participant did one or more of the following:
- (a) asked questions on cross-examination that were unduly repetitive of questions previously asked by another participant and answered by the relevant witness,
 - (b) made reasonable efforts to ensure that their evidence was not unduly repetitive of evidence presented by another participant,
 - (c) made reasonable efforts to cooperate with other parties to reduce the duplication of evidence and questions or to combine its submission with that of similarly interested participants,
 - (d) presented in oral evidence significant new evidence that was available to them at the time they filed documentary evidence but was not filed at that time,

- (e) failed to comply with a direction of the Board, including a direction on the filing of evidence,
- (f) submitted evidence and argument on issues that were not relevant,
- (g) needed legal or technical assistance to take part in the proceeding,
- (h) engaged in conduct that unnecessarily lengthened the duration of the hearing or other proceeding or resulted in unnecessary costs to other participants, and
- (i) failed to comply with the Rules of Practice.

Costs award

39. (1) Where the Board has awarded costs in a proceeding, the Board shall issue a costs order setting out the amount awarded to a participant and by whom the payment must be made.
- (2) In proceedings where there is a delay in ascertaining the costs of the Government of the Yukon for Board costs for the proceeding and the Board has awarded costs in a proceeding, the Board may issue **two separate costs orders**:
- (a) one costs order setting out the amount awarded to a participant and by whom the payment must be made, and
 - (b) another costs order setting out the amount awarded to the Government of the Yukon for Board costs and by whom the payment must be made.
- (3) An applicant named in a costs order shall pay the amount awarded to an intervenor within 30 days of the issuance of the cost order.
- (4) A costs order may state whether an applicant named in the order is authorized to record the costs in its hearing costs reserve account.

This new section acknowledges that the Government of Yukon's costs relating to Board expenses often take longer to calculate than other costs, and that waiting until all costs have been finalized may create an undue financial burden on other participants. In such cases the Board proposes to issue an initial order relating to those costs claimed by all parties except the Government of Yukon.

Appendix A

Scale of costs

Allowable fees and expenses

1. A participant may claim only the following costs at the rates equal to or lesser than those set out below:

- (1) Professional fees

This scale of costs provides a sliding scale for professional fees; as the professional's experience increases, so will their value and wage. The Board emphasizes that the maximum allowable hourly rates will not be awarded as a matter of course. Rather, the Board will assess each claim upon its individual merits and will only approve the maximum fee when it has been demonstrated that such a charge is warranted by the work performed.

The Board allows professionals only half of their hourly rate for travel time.

- (2) Claims for professional fees

Claims for professional fees must be accompanied by a statement of account that must include the following:

- The date of activity undertaken;
- A description of the activity undertaken with sufficient detail to allow the Board to understand the nature of the activity and how it relates to the issues being advanced by the participant;
- The rate claimed and years of experience; and
- The time incurred with respect to each described service.

- a. Legal fees

Articling students: \$140 per hour

One to four years at the bar: \$240 per hour

Five to seven years at the bar: \$280 per hour

Eight to twelve years at the bar: \$320 per hour

More than twelve years at the bar: \$350 per hour

Legal fees are deemed to include all overhead charges implicit in the normal operation of a law firm. The Board will not award legal fees for secretarial or support staff work.

b. Fees of consultants, analysts and experts

One to four years of experience: \$120 per hour

Five to seven years of experience: \$160 per hour

Eight to twelve years of experience: \$230 per hour

More than twelve years of experience: \$270 per hour

Consultant, analyst and expert fees are deemed to include all overhead charges implicit in the normal operations of consultants, analysts and experts. The Board will not award consultant fees for secretarial or support staff work.

c. Fees for unrepresented intervenors

An unrepresented intervenor may claim for the number of hours spent in preparing their evidence and submissions in a proceeding.

The hourly rate of an unrepresented intervenor shall not exceed \$100 and will be determined by the Board when assessing the costs claim.

An unrepresented intervenor may claim an honorarium of \$50 for each half day of attendance at an oral hearing.

2. Expenses

The Board will not consider expense claims that are based upon percentages of the fees claimed. All receipts relating to a claim for disbursements must be legible and must clearly identify the date upon which the receipt was issued. Unless otherwise stated, the Board will not request clarification for receipts that do not satisfy these requirements, and the related claim may not be approved.

a. Office expenses

The Board will consider claims for the following office disbursements incurred throughout the participant's involvement in the proceeding:

- photocopies at 10 cents per page

The Board does not require a participant to submit receipts for the above disbursements. A participant should, however, retain receipts for such expenses, in the event the Board requests the receipts.

Office expenses other than those listed above may be listed as miscellaneous, with a brief explanation of the expenses claimed and receipts attached.

b. Personal expenses

The Board will consider claims for the following personal expenses that are incurred during an oral hearing:

Meals

The maximum allowable daily claim for meals is in accordance with current Government of Yukon rates. Claims for meals are restricted to the duration of an oral hearing. Tips are not claimable.

Accommodation

The maximum allowable daily claim for accommodation is in accordance with current Government of Yukon rates. Claims for accommodation are restricted to the duration of an oral hearing.

Receipts must accompany all claims for accommodation.

Travel

The Board's mileage rate for automobile travel is in accordance with current Government of Yukon rates. This portion of a claim is restricted to travel distances of 50 km or greater from the hearing venue.

The Board will recognize claims for airfare at economy rates or less. Claims for airfare are restricted to an oral hearing. Receipts are required and must clearly identify the date of departure and arrival.

Taxi

Taxi claims are restricted to an oral hearing. Taxi receipts need not accompany the claim. Tips are not claimable. However, a participant should retain such receipts in the event that the Board requests the receipts.

Parking

Parking claims are restricted to an oral hearing. Parking receipts need not accompany the claim. However, an claimant should retain such receipts in the event that the Board requests the receipts.