

**THE PUBLIC UTILITIES BOARD**  
**RULES OF PRACTICE AND PROCEDURE**

**Title**

1. These Rules may be cited as the Rules of Practice.

**Definition**

2. In these Rules:
  - a) "ACT" means *The Public Utilities Board Act*, R.S.M. 1987 Chapter P 280 as amended from time to time;
  - b) "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;
  - c) "APPLICANT" means a party who has filed an application with the Board under the Act or its Regulations;
  - d) "APPLICATION" means a written request to the Board to exercise its statutory power in respect of matters referred to in the application;
  - e) "BOARD" means The Public Utilities Board and where the context requires, includes a panel of the Board;
  - f) "COMPLAINT" means a written request to the Board to exercise its statutory power in respect of matters referred to in the complaint;
  - g) "DOCUMENTS" include 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;
  - h) "ELECTRONIC HEARING" means a hearing held by conference telephone or some other form of electronic technology allowing persons to communicate with one another;
  - i) "HEARING" means a proceeding before the Board wherein a party or parties provide submissions to the Board which submissions may, in the Board's discretion, be preceded by the provision of information and/or evidence to the Board, and includes an Electronic Hearing, an Oral Hearing and a Written Hearing;

- j) "INFORMATION REQUEST" means any request made in writing by a party for information or particulars directed to a party in a proceeding;
- k) "INTERVENER" 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 27;
- l) "MOTION" means a request for a ruling or order in a proceeding or a pending proceeding;
- m) "ORAL HEARING" means a hearing at which the parties or their representatives attend before the Board in person;
- n) "PARTY" means either an applicant, an Intervener and for the purpose of these Rules, any other person whom the Board determines to be a party to a proceeding;
- o) "PRESENTER" means any person who makes an unsworn or unaffirmed statement concerning an application to the Board in respect of a proceeding;
- p) "PRE-HEARING CONFERENCE" means a meeting, which may be held before a Hearing, to set a timetable for the Proceeding, to finalize what matters may be discussed and to identify Interveners;"
- q) "PROCEEDING" means a process to decide a matter brought before the Board, including a matter commenced by application ;
- r) "SECRETARY" means the Secretary or Acting Secretary of the Board;
- s) "WRITTEN HEARING" mean a Hearing in which the proceeding before the Board is conducted entirely in writing.

## PART 1 GENERAL

### **Application of Rules**

3. (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.
- (3) The Board has all the powers of a Court of Queen's Bench or a Judge thereof in respect of the attendance and examination of witnesses, the amendment of proceedings, the production and inspection of documents, the enforcements of its Orders and all other matters necessary or proper for the due exercise of its powers, except as otherwise provided in *The Public Utilities Board Act* [Section 24(4), *The Public Utilities Board Act*].

### **Direction on Procedure**

4. (1) In any proceeding, the Board may issue directions on procedure which will govern the conduct of that proceeding and will prevail over any provision of these Rules that is inconsistent with those directions.
- (2) The Board may recommend or order that Interveners with similar interests present a joint intervention.
- (3) Any person intending to make an application to the Board may, prior to filing the application, apply by ex parte motion to the Board for the issuing of directions on procedure relating to the proposed application.

### **Service On Interested Parties**

5. (1) Subject to subsection (2), a document required to be served under these Rules or by the Board may be served on a person:
  - (a) by personal delivery;
  - (b) by courier service, ordinary mail, fax or electronic means to the last known address or such other address given by the person; or
  - (c) by such other method as the Board directs.
- (2) A document may only be served by electronic means if the person being served

has the information technology, equipment, software and processes for receiving or retrieving the document. Where a person expresses a preference to be served electronically in accordance with Rule 27(1)(d) or otherwise, that person may register that preference with the Board and service in accordance with such preference shall be deemed effective unless notice to the contrary is given to the Board.

- (3) The date of service of a document is the day on which the person being served receives the document unless it is received after 5 o'clock in the afternoon Central Standard Time, in which case the date of service is deemed to be the next business day. Where a document is served by ordinary mail, the date of service shall be five days after placing it in the mail.
- (4) The Board may require a person to file an affidavit of service setting out on whom a document was served and the means taken to effect service.
- (5) When an oral hearing or electronic hearing is in progress, a party entering a document as an exhibit shall provide copies of the document to the Board, the Board staff attending the hearing and the other parties.
- (6) The Board may serve, or direct the applicant to serve, a notice issued by the Board either in accordance with this section or by public advertisement in a daily or weekly newspaper in circulation in the community affected by the proceeding as determined by the Board.
- (7) Any document required to be served on a party under these Rules may be served on the party's representative.

### **Filing With the Board**

6. (1) Filing of any document with the Board may be effected by personal delivery, registered mail, telefacsimile, electronic means or otherwise as the Board may direct.
- (2) Where any document is required to be filed with the Board, the date of filing shall be the date of actual receipt by the Secretary or anyone authorized by the Secretary to receive such documents; but when a hearing is in progress, any document which is required to be filed shall be filed with the Secretary at the hearing and with the Interveners of record.

### **Affidavits**

7. (1) The Board may, in its discretion, accept and act upon evidence by Affidavit which

evidence shall be filed with the Secretary.

- (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.

### **Verification**

8. (1) The Board may, at any time and on notice, require the whole or any part of any document filed with the Board to be verified by Affidavit or oral testimony.
- (2) Unless the Board otherwise directs, if the notice given under Subsection (1) is not complied with, the document in question, or any part thereof not verified in accordance with the notice, shall be struck from the record.

### **Failure to Comply**

9. Where a party to a proceeding has not complied with any requirement of these Rules or any direction of procedure or order issued by the Board, the Board may stay the proceedings until satisfied that such requirement has been complied with or take such other steps as it considers just and reasonable, including the withdrawal of status of any Intervener in the proceeding.

### **Formulation of Issues**

10. In any proceeding,
  - a) where the documents 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**

11. (1) To facilitate the hearing process a pre-hearing conference may be held 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 documents and information requests;
  - d) the procedures to be adopted in the proceeding;
  - e) any other matters that may aid in the simplification and disposition of the proceeding; and
  - f) registration of Interveners, where possible.
- (2) Where, in the opinion of the Board, the amount, level of detail and complexity of material so warrants, the Board may direct the parties to participate in a non-evidentiary technical conference 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 of the Board and interested parties.

### **Production of Documents**

12. (1) Where, in an application, intervention, motion or response to an information request, a party refers to a document which the party intends to rely on in the proceeding, that party shall attach a copy of that document to its evidence.
- (2) The Board, on its own initiative or upon motion by any party may order any person or party in a proceeding to produce any document relating to the proceeding.
- (3) Any party who fails to comply with an order pursuant to subsection (2) shall be deemed to be in breach of the said order.

### **Confidentiality**

13. (1) Where, a document 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 on any terms it considers appropriate in the public interest,
- a) if the Board is of the opinion that disclosure of the information could reasonably be expected
    - (i) to result in undue financial loss or gain to a person directly or indirectly affected by the proceeding; or
    - (ii) to harm significantly that person's competitive position.

or

  - b) if
    - (i) the information is personal, financial, commercial, scientific or technical in nature; or
    - (ii) the information has been consistently treated as confidential by a person directly affected by the proceeding; and
    - (iii) the Board considers that the person's interest in confidentiality outweighs the public interest in the disclosure of the information.
- (3) Where disclosure of any document 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 22, and may
- a) order the document be placed on the public record, subject to Subsection 13(5);
  - b) order the document not be placed on the public record, with such conditions on access imposed as the Board considers appropriate;
  - c) order an abridged version of the document to be placed on the public record; or
  - d) make any other order the Board finds to be in the public interest.
- (4) For purposes of hearing a motion in respect of a disputed claim under Subsection (3), the Board may examine the document or other evidence in question to ascertain whether or not the claim for confidentiality or the claim for public disclosure will be sustained.
- (5) Where the Board has decided to place on the public record any part of a

document that was filed in confidence in accordance with Subsection 13(2) and 13(3), the party who filed the document shall be given an opportunity to request that it be withdrawn prior to its placement on the public record.

### **Information Requests**

14. (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 designated prefix 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**

15. (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:
- a) provide a full and adequate response to each information request on a separate page or pages, or, by agreement between the parties by electronic means; and
  - b) file a written copy of the responses with the Secretary and serve a written or electronic copy of the responses on all parties to the proceedings as directed by the Board.
- (2) Where there is a dispute with respect to the adequacy of a response to an information request, 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.
16. A party who is unable or unwilling to provide a full and adequate response to an interrogatory shall file and serve a response:
- a) where the party contends that the interrogatory is not relevant, setting out specific reasons in support of that contention;
  - b) where the party contends that the information necessary to provide an answer is not available or cannot be provided with reasonable effort, setting out the reasons for the unavailability of such information, as well as any alternative available information in support of the response that the party considers would be of assistance to the party making the information requests;
  - c) where the party contends that the information sought is of a confidential nature, setting out the reasons why it is considered confidential and any harm that would be caused by making it public; or
  - d) otherwise explaining why such a response cannot be given.

### **Evidence**

17. (1) The Board may receive evidence by:
- a) sworn testimony or testimony solemnly affirmed; or
  - b) the report of any person directed by the Board to so report; or
  - c) such other manner as may be deemed appropriate by the Board.
- (2) Witnesses at a hearing shall be examined orally under oath or affirmation unless otherwise directed by the Board.
- (3) Counsel may communicate with his or her witness who is being cross examined, unless otherwise directed by the Board.
- (4) 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.
- (5) 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 present at the hearing and that the witness:

- a) testifies as to his/her qualifications;
  - b) confirms that the written material was prepared under his/her direction and control and is accurate to the best of his/her knowledge and belief; and
  - c) submits to cross-examination on the same.
- (6) Where the Board has prescribed a time limit for the filing of written evidence, supplementary written evidence may be filed after the time prescribed only with leave of the Board.
  - (7) Should any party seek to challenge the admissibility of the pre-filed evidence of any other party, such a challenge shall be brought by way of a motion under Rule 22 prior to the commencement of the public hearing.
  - (8) The Board may issue commissions to take evidence outside of Manitoba and may make all proper orders for that purpose and for the return and use of the evidence so obtained.

### **Evidence in Other Proceedings**

18. 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.

### **Examination**

19. The procedure for presenting evidence shall be the same for applicants, interveners and independent witnesses and shall be as follows:
  - (1) Pre-filed written evidence:
    - a) Applicants shall provide pre-filed written evidence in support of the application;
    - b) Intervenors' witnesses/independent witnesses shall provide pre-filed written evidence in response to the applicant's pre-filed written evidence; or
    - c) Applicants may provide written pre-filed rebuttal evidence to address issues raised in the intervenors'/independent witnesses' pre-filed written evidence.
  - (2) Applicant's oral evidence:

- a) Applicant's direct oral evidence shall include oral testimony on its pre-filed evidence and its pre-filed rebuttal evidence in accordance with Rule 19(4);
  - b) cross-examination of applicant's witnesses on pre-filed evidence, pre-filed rebuttal evidence and/or direct oral evidence; and
  - c) Applicant's re-examination to clarify issues that were first raised during the cross-examination of the applicant.
- (3) Intervener/Independent witnesses' evidence:
- a) Intervener/independent witnesses shall provide direct oral evidence, including oral testimony on their pre-filed written evidence, and response(s) to the applicant's written and oral testimony;
  - b) cross-examination of the interveners/independent witnesses on their pre-filed evidence and direct oral evidence;
  - c) Intervener/independent witnesses re-examination to clarify issues that were first raised during the cross-examination of the intervener/independent witnesses; and
  - d) Subsections (3) a), b) and c) shall be repeated for each intervener/independent witness.
- (4) Applicant's oral rebuttal evidence:
- a) Applicant's oral rebuttal evidence to address issues raised for the first time during Interveners'/Independent witnesses' oral testimony;
  - b) cross-examination of the applicant's oral rebuttal evidence; and
  - c) Applicant's re-examination of rebuttal witnesses to clarify points that were first raised during the cross-examination of the rebuttal witnesses.

### **Attendance of Witnesses (Subpoenas)**

20. (1) The Board or party who requires the attendance of a person as a witness before the Board may serve the person with a subpoena requiring him or her to attend the hearing at the time and place stated in the subpoena and the subpoena may also require the person to produce at the hearing the documents or other things in his/her possession, control or power relating to the matters in question in the hearing that are specified in the subpoena.

- (2) Any party served with a subpoena and who has an objection to filing a document or to attending the hearing stated in the subpoena may proceed for an order by way a motion pursuant to Rule 22.
- (3) The subpoena for a witness to produce a document or to attend a hearing shall be signed by the Secretary of the Board.

### **Amendments**

21. 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 such other amendment as may be necessary for the purpose of hearing and determining the real questions and issues in the proceeding.

### **Motion**

22. (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, in any form, provided it contains a clear and concise statement of the facts, the order or the decision sought and the reasons for such an order or decision.
- (3) A motion shall be filed and served on all interested parties at least 6 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 2:00 p.m. two days before the day the motion is 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 orally or in writing at any time during the course of a hearing and shall be disposed of in accordance with such procedures as the Board may direct.
- (7) When hearing a motion, the Board may permit oral evidence in addition to any

affidavit or other supporting material.

## **PART II HEARING PROCEDURE**

### **Application to the Board**

23. 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 and contain full disclosure of the application together with all supporting documents to be attached at the time of filing;
  - f) contain a detailed index of the entire application, which may be updated regularly throughout the public hearing process by the Board, to include the information in the application, the subject matter of all information requests, intervener evidence and rebuttal evidence;
  - g) be signed by the applicant or his/her authorized agent or representative; and
  - h) state the name, mailing address, e-mail address and telephone number of the applicant or of the authorized agent or representative of the applicant to whom communications shall be sent and/or upon whom documents shall be served.

### **Hearing of the Application**

24. (1) On receipt of an application, the Board may set a hearing date after the date of the pre-hearing conference or at any other date fixed by the Board.
- (2) An application for an interim ex-parte order shall only be made:
- (a) if emergency circumstances exist; or
  - (b) if there is urgency where, in the Board's opinion, when balancing the interest of providing notice of an application with the financial health of the Applicant, it is deemed just and reasonable to proceed ex parte; or

- (c) for purposes of efficiency; or
- (d) for such other special circumstances as may be determined by the Board; and
- (e) If the applicant provides full disclosure as to why the application should proceed ex parte.

### **Publication of Notice of Hearing**

25. (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 of a forthcoming public hearing in communities outside of Winnipeg as the Board may direct; and
  - e) publish a further reminder notice, if so directed by the Board.
- (2) The applicant shall file with the Secretary proof, by affidavit, of publication pursuant to subsection (1) a) and of service pursuant to subsection (1) b).
- (3) Notices 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**

26. (1) The information contained in an application and the information submitted by an applicant to the Board, pursuant to Rules 17, 19, 21 and 23, shall be deemed to constitute 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.

- (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 present 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**

27. (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, a written request to intervene [Intervener Request Form, Appendix I] that:
  - a) clearly identifies the specific issue(s) on which that prospective intervener seeks Board approval to intervene;
  - b) where seeking an award of costs, clearly quantifies the cost of the proposed intervention, by issue;
  - c) states clearly the intervener's intention to appear at the public hearing and to participate in the leading and the testing of evidence; and
  - d) sets out the name, mailing address, e-mail address and address for personal service and telephone number of the Intervener or agent authorized to receive documents on that person's behalf, and the preference for the method of receiving information.
- (2) Before determining whether to award intervener status to any person, the Board will review the written request for intervention 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, evidentiary and argument procedures.
- (3) Should any party object to the intervention by any other party, such objection and challenge to the Intervener status shall be made by way of a motion under Rule 22, prior to the commencement of the public hearing.



- (4) Unless the Board directs otherwise, the applicant shall serve each intervener with:
  - a) a copy of the application or other document initiating the proceeding; and
  - b) any pre-filed written evidence or material submitted to the Board.
- (5) Interveners are to avoid duplication of evidence, and subject to Rule 4 (2) are to consider joint interventions with other interveners.

### **Presentation**

28. 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**

29. (1) Any party to the proceeding may address an information request to any other party in the proceeding, in accordance with Rule 14.
- (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**

30. (1) At hearings, parties will be afforded an opportunity to present their evidence and to examine and cross-examine witnesses. Because all proposed evidence is to be pre-filed in accordance with Rule 17 (4), the direct oral evidence given at the hearing should be in summary form.
- (2) The written evidence of an applicant and an intervener shall be deemed to include its pre-filed evidence and any responses to information requests by that applicant or intervener.
- (3) A party may update or revise their evidence, only with leave of the Board.

## **Argument**

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

## **Summary Application**

32. (1) The Board may grant an order permitting and directing an applicant to proceed by way of summary application.
- (2) An order granted by the Board to proceed by way of summary application shall only be made after public notice of the proposed procedure and after holding a public hearing to consider the terms of the order of the summary procedure.
- (3) An order permitting an applicant to proceed under summary application shall, in all events, provide for:
- a) notice to all effected parties as directed by the Board;
  - b) notice of the Board's intention to grant the application without a public hearing on the written evidence, unless a complaint or request is filed and accepted by the Board requesting a public hearing; and
  - c) such other terms as the Board may provide.
- 4) Notwithstanding a summary application order issued by the Board, the Board shall have in its absolute discretion the right at any time to order the cancellation or variance of any summary application order in respect to any matter coming or to come before it.

## **Sittings, Facilities and Translation**

33. (1) The Board shall hold hearings at such times and places 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.
- (3) The Board may direct advisors to assist interveners in matters of procedure and conduct if requested.
- (4) The Board shall, whenever practicable, conduct hearings in buildings open to the public with wheelchair accessibility.

- (5) The Board will arrange signing translation for hearing impaired persons upon five days notice.
- (6) The Board will arrange for simultaneous French translation to hear any person using the French language upon reasonable prior notice.

### **Transcripts**

34. (1) The Board may retain reporters to supply transcripts of its proceedings.
- (2) A copy of the transcript of a proceeding will be available for review at the Board's office following the hearing.
- (3) During the hearing, the Board shall provide one copy of the daily transcript to interveners on a shared basis, if so requested.

### **Issuance of an Order**

35. (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. [Section 44(1) of the Act]
- (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 practical.

### **Review**

36. (1) The Board may, on its own initiative or on application by a person, review, rescind, change, alter or vary any decision or order by it.
- (2) An application for a review under subsection (1) must be in writing and contain the following:
  - a) a clear and concise statement of facts relevant to the application;
  - b) the grounds on which the application is made;
  - c) a brief explanation as to the nature of the prejudice or damage that has resulted or will result from the order, decision or direction;
  - d) a brief description of the remedy sought; and

- e) the applicant's name, address in Manitoba, telephone number, fax number and, if available, e-mail address.
- (3) An application for a review must be filed and served on the parties to the proceeding for which the order or decision of the Board was made within 30 days of the date of the order or decision.
- (4) The Board shall determine, with or without a hearing, in respect of an application for review, the preliminary question of whether the matter should be reviewed and whether there is reason to believe the order or decision should be rescinded, changed, altered or varied.
- (5) After determining the preliminary question under subsection (4), the Board may:
- a) dismiss the application for review if,
    - i) in the case where the applicant has alleged an error of law or jurisdiction or an error in fact, the Board is of the opinion that the applicant has not raised a substantial doubt as to the correctness of the Board's order or decision; or
    - ii) in the case where the applicant has alleged new facts not available at the time of the Board's Hearing that resulted in the order or decision sought to be reviewed or a change of circumstances, the Board is of the opinion that the applicant has not raised a reasonable possibility that the new facts or the change in circumstances as the case may be, could lead the Board to materially vary or rescind the Board's order or decision;
  - or
  - b) grant the application; or
  - c) order a hearing or proceeding be held.
- (6) If the Board orders a hearing be held under subsection (5), it shall issue a Notice of Review, and a new hearing or proceeding will be held in accordance with these rules as determined by the Board.
- (7) A notice of review under subsection (6) must contain the same information as is contained in a notice of hearing.
- (8) No application for review may be made in respect of:
- a) a decision or order made by the Board as a result of a review under this

section; or

- b) a decision or order of the Board which has been appealed to the Court of Appeal.
- (9) The Board may at any time, without a hearing or notice of review correct typographical errors, errors of calculation and similar errors made in any of its orders or decisions.

## **PART III OTHER PROCEDURES**

The following are excerpts from the Act:

### **Initiation of Inquiries**

37. The Board may of its own motion and shall upon the request of the Legislature or the Lieutenant Governor in Council, inquire into, hear and determine any matter or thing within its jurisdiction [Section 27(1)].

### **Reports by One Member**

38. The Board or the Chairman may authorize a member to report to the Board upon any question or matter arising in connection with the business of the Board; and that member, where so authorized, has all the powers of the Board for the purpose of taking evidence or acquiring the necessary information for the purpose of the report; and, upon the report being made to the Board, the Board may adopt it as the order of the Board or otherwise deal with in the absolute discretion of the Board [Section 16].

### **Hearing by Single Member**

39. A single member may hear an application, petition, matter or complaint over which the Board has jurisdiction under this or any other Act of the Legislature; and after the hearing, the member shall report thereon fully to the Board; and the Board may thereupon deal with the application, petition, matter or complaint as if the hearing had been before the full Board [Section 31(1)].

### **Review of Orders**

40. (1) The Board may require a re-hearing of an application before making any decision thereon [Section 44(2)].
- (2) The Board may review, rescind, change, alter or vary any decision or order made by it [Section 44(3)].

### **Interim Ex Parte Orders**

41. The Board may, if the special circumstances of any case so require, make an interim ex parte order authorizing, requiring or forbidding anything to be done that the Board would be empowered on application, petition, notice and hearing to authorize, require or forbid; but no such order shall be made for any longer time than the Board deems necessary to enable the matter to be heard and determined on such application, petition, notice or hearing [Section 45].

### **Interim Order**

42. The Board may, instead of making an order final in the first instance, make an interim order and reserve further directions, either for an adjourned hearing of the matter or for further application [Section 47(2)].

## PART IV AWARDING OF COSTS

### Criteria

43. In any proceeding the Board may award costs to be paid to any Intervener who has:
- a) made a significant contribution that is relevant to the proceeding and contributed to a better understanding, by all parties, of the issues before the Board;
  - b) participated in the hearing in a responsible manner and cooperated with other Interveners who have common objectives in the outcome of the proceedings in order to avoid a duplication of intervention;
  - c) insufficient financial resources to present the case adequately without an award of costs; and
  - d) a substantial interest in the outcome of the proceeding and represents the interests of a substantial number of the ratepayers.
44. In determining the amount of costs to be awarded to a intervener, the Board may consider whether the intervener did one or more of the following:
- a) asked questions on cross-examination that were unduly repetitive of questions previously asked by another intervener;
  - b) made reasonable efforts to ensure that the intervener's evidence was not unduly repetitive of evidence presented by another intervener;
  - c) made reasonable efforts to cooperate with other interveners to reduce the duplication of evidence and questions or to combine the intervener's submission with that of similarly interested interveners;
  - d) presented in oral evidence significant new evidence that was available to the intervener at the time that intervener pre-filed its written 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 the evidence;
  - f) submitted evidence and argument on issues that were not relevant to the proceeding;
  - g) needed legal or technical assistance to take part in the proceeding;



- h) engaged in conduct that unnecessarily lengthened the duration of the proceeding or resulted in unnecessary costs;
- i) the intervener took part in the proceeding for the sole purpose of protecting the intervener's business interests; or
- j) such other factor(s) as the Board considers relevant.

### **Costs**

45. (1) Costs awarded under this section:
- a) may include the fees of consultants, expert witnesses and counsel associated with the intervention but shall not include indirect expenses relating to an Intervener's own time, such as wages lost by attendance at the hearing;
  - b) may include disbursements, the amounts allowed under the Manitoba Government employee rates, approved from time to time, for travel, meals and accommodation. Consideration will be given to providing for different amounts if they can be justified; and
  - c) shall be at the sole discretion of the Board.
- (2) The Board may award only a portion of the costs being sought by an Intervener.

### **Procedures**

46. (1) For purposes of awarding costs to any party, the Board may establish a tariff of fees and disbursements.
- (2) A party applying for costs shall so inform the Board when filing the form requesting to intervene, as in Appendix I.
- (3) An intervener seeking an award of costs should attend any pre-hearing conference to confer with other interveners and avoid duplication of intervention as referred to under Rule 4(2).
- (4) The Board may hear submissions regarding the awarding of costs to interveners during final argument, or may direct such submissions to be made in writing following final argument.
- (5) Any intervener applying for an award of costs under subsection 45(1) shall provide the Board with a breakdown of costs, reasonably and necessarily incurred, within

30 days of the last day of the hearing and in the form of the attached Appendix II, "Budget and Cost Summary Sheet", and serve a copy on the applicant.

- (6) The applicant may forward any comments or objections for costs, as set out on the "Budget and Cost Summary Sheet" form, to the respective Intervener and to the Board within 10 working days after receipt thereof.
- (7) The intervener seeking costs shall have a further period of 10 working days, after receipt of any comments by the applicant under Subsection (6), to submit a response to the Board with a copy to the applicant.
- (8) The Board shall issue an order in response to each application for costs, and if costs are awarded, the party ordered to pay the costs shall pay such costs within 15 days of the Board's cost order.

Originally Adopted June 1, 2006  
Revised March 14, 2007

“APPENDIX I”

## INTERVENER REQUEST FORM

1. Application Re Hearing:		
2. Name of Requesting Party:		
3. Address of Requesting Party:		
4. Phone Number:	Business:	Residence
	Fax Number:	E-mail:
5. Contact Person(s):		
6. Address:		
7. Phone Number:	Business:	Residence:
	Fax Number:	E-mail:
8. State reasons for the proposed intervention (please be specific).		



<b>9. State nature of proposed intervention.</b>		
<b>a) Do you intend</b>	<b>Yes</b>	<b>No</b>
(i) to appear throughout the hearing:	<input type="checkbox"/>	<input type="checkbox"/>
(ii) to participate in the production of evidence:	<input type="checkbox"/>	<input type="checkbox"/>
(iii) to participate in the testing of evidence:	<input type="checkbox"/>	<input type="checkbox"/>
(iv) to present final argument:	<input type="checkbox"/>	<input type="checkbox"/>
<b>b) Do you intend to call witnesses:</b>	<b>Yes</b>	<b>No</b>
	<input type="checkbox"/>	<input type="checkbox"/>
<b>c) If yes to No. 9b), please provide witness':</b>		
(i) Name:		
(ii) Address:		
(iii) Qualifications:		
(iv) Subject of submission (please note date for filing submission):		
<b>10. Will you be applying for costs under Board Order No. 163/87:</b>	<b>Yes</b>	<b>No</b>
	<input type="checkbox"/>	<input type="checkbox"/>
If yes: Refer to Section 43 of Rules of Practice and Procedure. Provide detailed budget as per the attached Appendix II.		
<b>11. Comments and other information:</b>		

**“APPENDIX II”**

**INTERVENER BUDGET AND COST SUMMARY SHEET**

To be used to prepare a budget for the Intervener Request Form, Item 10, and to make a claim for an Award of Costs.

PAGE 1 OF 2

Prepared by:		Date:
Hearing:		
Period Covered:		
Intervener's Name:		
Contact Person or Persons:		
Address:		
Phone Number:	Business:	Residence:
	Fax Number:	E-mail:

See Costs on Page 2.

**FEES – to be completed for legal counsel or experts**

				<b>COSTS</b>
<b>PREPARATION:</b>	Hours	Days	Rate	
<b>APPEARANCE:</b>	Hours	Days	Rate	
<b>ARGUMENT &amp; REPLY</b>	Hours	Days	Rate	
<b>FEES TOTAL</b>	Hours	Days		

**DISBURSEMENTS**

				<b>COSTS</b>
<b>TRAVEL (AUTO)</b>	Kms		Rates	
<b>TRAVEL (OTHER)</b>				
<b>ACCOMMODATION</b>	Nights		Rates	
<b>MEALS</b>	Number			
<b>MISCELLANEOUS</b>	Taxis	Telephone	Supplies	
<b>DISBURSEMENTS TOTAL</b>				

<b>TOTAL FEES AND DISBURSEMENTS</b>	
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**NOTE: Receipts must be attached for all disbursements.**