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(Consolidated up to 183/2011)

ALBERTA REGULATION 98/2011

Energy Resources Conservation Act

ENERGY RESOURCES CONSERVATION BOARD RULES OF PRACTICE

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Interpretation of Rules

1 These Rules must be liberally construed in the public interest to ensure the most fair, expeditious and efficient determination on its merits of every proceeding before the Board.

Definitions

2 In these Rules,

- (a) “Act” means the *Energy Resources Conservation Act* and any other Act under which the Board is charged with the conduct of proceedings;
- (b) “applicant” means a person who files an application with the Board;
- (c) “application” means an application to the Board for an approval, permit, licence or other relief under the Act;
- (d) “Board” means the Energy Resources Conservation Board and, where examiners are appointed by the Board to conduct a proceeding, the examiners for the purpose of the proceeding;
- (e) “Crown” means Her Majesty Queen in right of Alberta;
- (f) “document” includes films, photographs, charts, maps, graphs, plans, surveys, books of account, transcripts, and video and audio recordings;
- (g) “electronic hearing” means an oral hearing conducted by conference telephone or other electronic means where each participant is able to hear and respond to the comments of the other participants at the time the comments are made;
- (h) “file” means file with the Board at its office in Calgary;

- (i) “hearing” means a hearing before the Board;
- (j) “information request” means a request for information described in section 29;
- (k) “intervener” means a person, other than an applicant, who files a submission with the Board in respect of a proceeding;
- (l) “notice of application” means a notice of application issued by the Board under section 22;
- (m) “notice of hearing” means a notice of hearing issued by the Board under section 23;
- (n) “oral hearing” means a hearing at which the participants attend in person before the Board;
- (o) “party” means
 - (i) an applicant,
 - (ii) an intervener, and
 - (iii) for the purposes of these Rules, any other person whom the Board determines to be a party to a proceeding;
- (p) “proceeding” means a matter brought before the Board
 - (i) by application,
 - (ii) by the Board on its own initiative, or
 - (iii) at the request of the Lieutenant Governor in Council;
- (q) “publication” means a directive, bulletin or other document issued by the Board;
- (r) “representative” means the agent or solicitor of a party;
- (s) “written hearing” means a hearing held by means of an exchange of documents whether in writing or in electronic form.

AR 98/2011 s2;183/2011

Application of Rules

3 These Rules apply to all energy proceedings of the Board, other than appeals under section 27.2 of the Act.

Part 1 General Matters

Directions

4 The Board may, at any time before making a decision on a proceeding, issue any directions that it considers necessary for the fair determination of an issue.

On-site visits

5 The Board may, with or without the parties, conduct an on-site visit of lands or facilities to better determine any matter relevant to the disposition of a proceeding before it.

Setting of time limits and extending or abridging time

6(1) The Board may set time limits for doing anything provided for in these Rules.

(2) The Board may, on its own initiative or on motion by a party, extend or abridge a time limit specified in these Rules or by the Board, 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 by the Board.

Variation of Rules

7 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.

Failure to comply with Rules

8(1) If a party fails to comply with these Rules or a direction of the Board, the Board may

- (a) make an order that the Board considers appropriate to ensure the fair determination of an issue, or
- (b) adjourn the proceeding until it is satisfied that these Rules or the direction of the Board has been complied with.

(2) If a party fails to comply with a time limit specified in these Rules or by the Board for the filing of documentary evidence or other material, the Board may disregard the documentary evidence or material.

(3) No proceeding is invalid by reason of a defect or other irregularity in form.

Motions

9(1) If a matter arises in a proceeding, other than during an oral hearing or electronic hearing, that requires a decision or order of the Board, a party may bring the matter before the Board by filing a motion.

(2) A motion brought under subsection (1) must

- (a) be in writing,
 - (b) briefly describe
 - (i) the decision or order sought,
 - (ii) the grounds on which the motion is made, and
 - (iii) the nature of any oral or documentary evidence sought to be presented in support of the motion,
- and
- (c) be accompanied with
 - (i) an affidavit setting out a clear and concise statement of the facts relevant to the motion, and
 - (ii) any documents that may support the motion.

(3) A party bringing a motion under subsection (1) shall serve a copy of it on the other parties.

(4) A party who wishes to respond to a motion brought under subsection (1) shall file and serve, as directed by the Board, a response.

(5) A response under subsection (4) must

- (a) be in writing,
- (b) briefly describe the nature of any oral or documentary evidence sought to be presented in support of the response, and
- (c) be accompanied with any documents that may support the response.

(6) A party who wishes to reply to a response to a motion under subsection (4) shall file and serve, as directed by the Board, a reply.

(7) A reply under subsection (6) must

- (a) be in writing,

- (b) briefly describe the nature of any oral or documentary evidence sought to be presented in support of the reply, and
- (c) be accompanied with any documents that may support the reply.

(8) If the Board decides to hear a motion brought under subsection (1), the Board shall give at least 2 days' notice to each party stating the time and place of the hearing.

(9) If a matter arises in an oral hearing or electronic hearing that requires a decision or order of the Board, a party may bring the matter before the Board by making a motion.

(10) A motion brought under subsection (9)

- (a) may be made orally, and
- (b) must be disposed of in accordance with such procedures as the Board may order.

Submissions

10(1) Where a person files a submission objecting to a proposed application for the development of an energy resource, the person shall indicate the following:

- (a) the right of the person that may be directly and adversely affected by a decision of the Board on the proposed application;
- (b) the manner in which the right may be directly and adversely affected by a decision of the Board on the proposed application;
- (c) the location of the land, residence or activity of the person in relation to the location of the energy resource that is the subject of the proposed application;
- (d) the name, address in Alberta, telephone number, fax number, if any, and if available, an e-mail address of the person.

(2) The person making a submission under subsection (1) shall serve a copy of the submission on the proponent of the proposed application.

Filing of documents

11(1) If a person is required to file a document with the Board, the person shall

- (a) file the original and the required number of copies of the document, as set out in the relevant statutory provision or publication, and
- (b) indicate on the original document
 - (i) the application number,
 - (ii) the date of filing, and
 - (iii) the name of each person on whom the person will serve or has served a copy of the document.

(2) Subsection (1)(b)(i) does not apply if the document is a form of application.

(3) Where a person files a submission or other document in relation to a proposed application prior to the filing of an application or the commencement of a proceeding, the person shall file the original document in accordance with subsection (1)(a).

(4) Subject to subsection (6), a document may be filed by personal delivery, courier service, ordinary mail, fax, electronic means or by any other means directed by the Board.

(5) If a document is filed by fax or electronic means, the original and the required number of copies of the document, as set out in the relevant statutory provision or publication, must be delivered in writing to the Board by the end of the next business day or as directed by the Board.

(6) A document may be filed by electronic means only if

- (a) the electronic means is compatible with the Board's information technology, equipment, software and processes, and
- (b) the document is in a form acceptable to the Board.

(7) A document is deemed to have been filed when it is received by the Board unless it is received after the Board's business hours, in which case the document is deemed to have been filed on the next business day of the Board.

(8) The Board may require that all or any part of a document filed be verified by affidavit.

Service of documents

12(1) Subject to subsection (3), 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 address given by the person, or
- (c) by such other method as the Board directs.

(2) If a person required to serve a submission or other document on a proponent of a proposed application or an applicant fails to do so, the Board may serve a copy of the submission or other document on the proponent or the applicant.

(3) A document may be served by electronic means only if the person being served has the information technology, equipment, software and processes for receiving or retrieving the document.

(4) 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 Mountain Standard Time, in which case the date of service is deemed to be the next business day.

(5) 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.

(6) Where 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.

(7) 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.

(8) Any document required to be served on a party under these Rules may be served on the party's representative.

Public record

13(1) Subject to this section, all documents filed in respect of a proceeding, including any submissions or other documents filed prior to the commencement of the proceeding, must be placed 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 and serve a copy of the request on the other parties.

(3) The request for confidentiality must

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

and

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

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

- (a) if the Board is of the opinion that disclosure of the information could reasonably be expected
 - (i) to result in undue financial loss or gain to a person directly 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,
 - (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 proceeding.

(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.

Technical reports

14 A document containing a technical report or material of a technical nature must indicate the technical qualifications of the person signing or taking responsibility for the report or material.

Revisions to documents

15(1) Despite any other provision in these Rules, the Board may, on any terms it considers appropriate,

- (a) allow a revision of all or any part of a document, or
- (b) order the revision of all or any part of a document that in the opinion of the Board is
 - (i) not relevant or may tend to prejudice or delay a fair hearing of an application or other proceeding on the merits, or
 - (ii) necessary for the purpose of hearing and determining the pertinent questions in issue in the proceeding.

(2) A party shall revise a document if

- (a) significant new information relating to the document becomes available before the proceeding is disposed of, and
- (b) the information is necessary for the purpose of hearing and determining the pertinent questions in issue in the proceeding.

(3) Any document that is revised must clearly indicate the date of the revision and the part of the document that is revised.

Affidavits

16(1) An affidavit intended to be used in a proceeding must be confined to those facts within the knowledge of the person making the affidavit or based on the information and belief of the person making the affidavit.

(2) If a statement is made in an affidavit on information and belief, the source of the information and the grounds on which the belief is based must be set out in the affidavit.

(3) If an affidavit refers to an exhibit, the exhibit must be marked as such by the person making the affidavit and attached to the affidavit.

Evidence

17(1) Unless the Board otherwise directs, if a party intends to present documentary evidence at an oral hearing or electronic hearing, or is directed to do so by the Board, the party shall file the documentary evidence and serve a copy of it on the other parties before the hearing takes place.

(2) The documentary evidence must be accompanied with a statement setting out the qualifications of the person who prepared the documentary evidence or under whose direction or control the evidence was prepared.

(3) If a party is not able to file all of the party's documentary evidence before the hearing takes place, the party shall

- (a) file such documentary evidence as is available at that time, and
- (b) file a statement
 - (i) identifying the balance of the documentary evidence to be filed, and
 - (ii) stating when the balance of the documentary evidence will be filed.

(4) If a party is not willing to file documentary evidence when directed to do so by the Board under subsection (1), the party shall file a statement setting out the reasons why the party is not willing to do so.

Additional information, documents and material

18(1) The Board may direct the applicant or an intervener to file such further information, documents or material as the Board considers necessary to permit a full and satisfactory understanding of an issue in a proceeding.

(2) If the applicant or the intervener does not file the information, documents or material when directed to do so by the Board under subsection (1), the Board may

- (a) adjourn the proceeding until the information, documents or material is filed, or
- (b) dismiss the application or submission, as the case may be.

Part 2 Commencement of Proceedings

Commencement of proceedings

19(1) Subject to subsection (2), a proceeding must be commenced by filing an application.

(2) A proceeding initiated by the Board or at the request of the Lieutenant Governor in Council may be commenced by a notice of hearing or as determined by the Board.

Form of application

20(1) An application must be in writing and contain the following:

- (a) a description of the approval, permit, licence or other relief applied for;
- (b) the grounds on which the application is made;
- (c) a reference to the statutory provision under which the application is made;
- (d) a clear and concise statement of the facts relevant to the application;
- (e) an explanation of the consultation process, if any, that the applicant has held with persons whose rights may be directly and adversely affected by the proceeding;
- (f) any other information required by the relevant statutory provision or publication;
- (g) any other information that may be useful in explaining or supporting the application;
- (h) the applicant's name, address in Alberta, telephone number, fax number and, if available, e-mail address;
- (i) if the applicant is represented by a representative, the representative's name, address in Alberta, telephone number, fax number and, if available, e-mail address.

(2) The application must be accompanied with an application fee, if any.

(3) The applicant shall serve a copy of the application on any person whose rights may be directly and adversely affected by a decision of the Board on the proceeding.

- (4) If an application is not complete, the Board shall notify the applicant in writing and request the information necessary to make the application complete.
- (5) If the applicant does not supply the information to make the application complete, the Board may dismiss the application.

Withdrawal of application or submission

- 21(1)** If an applicant wishes to withdraw an application before a hearing is held, the applicant shall file a notice of withdrawal of application in writing and serve a copy of the notice on the other parties.
- (2) The Board may, with or without a hearing, grant an application to withdraw an application on any terms that it considers appropriate.
- (3) If an applicant does not take any steps with respect to an application within the time specified in these Rules or by the Board, the Board may declare the application to be withdrawn, unless the applicant shows cause why the application should not be withdrawn.
- (4) If an intervener wishes to withdraw a submission before a hearing is held, the intervener shall file a notice of withdrawal in writing and serve a copy of the notice on the other parties.

Notice of application

- 22(1)** If the Board is considering deciding on an application without a hearing, the Board may issue a notice of application.
- (2) A notice of application must
- (a) be in writing,
 - (b) briefly describe the subject-matter of the application,
 - (c) indicate the date by which a submission must be filed,
 - (d) state that the Board may grant the application without a hearing if there are no submissions objecting to the application filed by a person whom the Board considers may be directly and adversely affected by a decision of the Board on the proceeding,
 - (e) indicate that copies of the application and other documents filed in support of the application

- (i) may be obtained from the applicant or the applicant's representative, and
 - (ii) are available for viewing at a location open to the public,
 - (f) indicate the name and address in Alberta of the applicant or the applicant's representative where the application and other documents filed in support of the application may be obtained,
 - (g) indicate the address of the location open to the public where the application and other documents are available for viewing and the hours during which they may be viewed, and
 - (h) contain any other information that the Board considers necessary.
- (3)** If a submission is filed, the Board may
- (a) set the application down for a hearing, or
 - (b) grant the application if
 - (i) the Board considers the submission to be frivolous, vexatious or of little merit, or
 - (ii) the person filing the submission has not demonstrated that the person may be directly and adversely affected by a decision of the Board on the proceeding.

Notice of hearing

23(1) If the Board decides to set an application down for a hearing, the Board shall issue a notice of hearing.

- (2)** A notice of hearing must
- (a) be in writing,
 - (b) briefly describe the subject-matter of the hearing,
 - (c) in the case of an oral or electronic hearing,
 - (i) indicate the date, time and place of the hearing, which must not be less than 10 days after the date of the notice, or
 - (ii) because of the complexity of the subject-matter of the proceeding, indicate that the date, time and place

of the hearing will be set after the filing of submissions by any interveners,

- (d) indicate if the hearing is to be held by examiners,
- (e) indicate that copies of the application and other documents filed in support of the application
 - (i) may be obtained from the applicant or the applicant's representative, and
 - (ii) are available for viewing at a location open to the public,
- (f) indicate the name and address in Alberta of the applicant or the applicant's representative where the application and other documents filed in support of the application may be obtained,
- (g) indicate the address of the location open to the public where the application and other documents are available for viewing and the hours during which they may be viewed,
- (h) contain a schedule showing the time limits for filing and serving submissions, responses to submissions, replies to responses to submissions, information requests, responses to information requests, documentary evidence and written argument, and
- (i) contain any other information that the Board considers necessary.

Submission of intervener

24(1) A person who wishes to intervene in a proceeding shall file a submission and serve a copy of it on the other parties within the time set out in the notice of hearing.

(2) A submission must be in writing and contain the following:

- (a) a concise statement indicating
 - (i) the manner in which the intervener's rights may be directly and adversely affected by a decision of the Board on the proceeding,
 - (ii) the nature and scope of the intervener's intended participation,
 - (iii) the disposition of the proceeding that the intervener advocates, if any,

- (iv) the facts the intervener proposes to show in evidence,
 - (v) the reasons why the intervener believes the Board should decide in the manner that the intervener advocates, and
 - (vi) the intervener's efforts, if any, to resolve issues associated with the proceeding directly with the applicant;
- (b) the name, address in Alberta, telephone number, fax number and, if available, e-mail address of the intervener;
 - (c) if the intervener is represented by a representative, the name, address in Alberta, telephone number, fax number and, if available, e-mail address of the representative;
 - (d) if the intervener is an unincorporated organization, the nature of the intervener's membership.
- (3)** The Board may, on receiving and examining a submission, do one or more of the following:
- (a) direct the intervener to serve a copy of the submission on such other persons and in such a manner as the Board specifies;
 - (b) direct the intervener to provide additional information to the Board;
 - (c) direct the applicant or the intervener to make further submissions, either orally or in writing, on the original submission;
 - (d) decide that the intervener will not be heard because
 - (i) the submission is frivolous, vexatious or of little merit, or
 - (ii) the intervener has not shown that the decision of the Board in the proceeding may directly and adversely affect the intervener's rights;
 - (e) if the Board is of the view that any matter set out in the submission is not in response to the application or has implications of importance beyond the application, direct a revision of the application or the submission that the Board considers necessary.

Question of constitutional law

25 In addition to giving notice in accordance with section 12 of the *Administrative Procedures and Jurisdiction Act* and the *Designation of Constitutional Decision Makers Regulation* (AR 69/2006), a person who intends to raise a question of constitutional law before the Board must include in its submission to the Board, filed in accordance with these Rules and any additional direction of the Board,

- (a) the constitutional question the person intends to raise,
- (b) the legal argument the person intends to make, and
- (c) the evidence the person intends to rely on in support of the person's legal argument.

Applicant to provide documents and material

26 After an intervener files a submission under section 24, the applicant shall provide the intervener with copies of any of the following documents and material that the applicant has not previously provided to the intervener:

- (a) the application and any other documents filed in support of the application;
- (b) any material filed as documentary evidence.

Late filing

27(1) A party who wishes to file a document, or a person who wishes to file a submission as an intervener, after the time limit set out in the notice of hearing has elapsed, may request of the Board leave to file the document or submission, as the case may be.

(2) The Board may grant a request under subsection (1) on any terms that the Board considers appropriate.

Adjournments

28 The Board may, on its own initiative or on motion by a party, adjourn a hearing on any terms that the Board considers appropriate.

Information request

29(1) A party may request another party, within the time limit set out in the notice of hearing, to provide information necessary

- (a) to clarify any documentary evidence filed by the other party,

- (b) to simplify the issues,
 - (c) to permit a full and satisfactory understanding of the matters to be considered, or
 - (d) to expedite the proceeding.
- (2)** An information request under subsection (1) must
- (a) be in writing,
 - (b) be directed to the party from whom a response is sought,
 - (c) 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,
 - (d) be filed and served as directed by the Board, and
 - (e) set out the date on which the information request is filed.

Response to information request

30(1) A party who is served with an information request under section 29 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) must
- (a) be in writing,
 - (b) be filed and served as directed by the Board, and
 - (c) set out the date on which the response is filed.

Partial or no response

31(1) If a party who is served with an information request under section 29 is not able or not willing to prepare a response in accordance with section 30, the party shall do one of the following:

- (a) if the party contends that the information request is not relevant, file and serve on the party making the request a response in writing that sets out the specific reasons in support of that contention;

- (b) if the party contends that the information necessary to provide an answer is not available or cannot be provided with reasonable effort, file and serve on the party making the request a response in writing that
 - (i) sets out the specific reasons in support of that contention, and
 - (ii) contains such other information that the party considers would be of assistance to the party making the information request;
- (c) if the party contends that the information requested is confidential, file and serve on the party making the request a response in writing that sets out the specific reasons why the information is confidential and any harm that may be caused if it were disclosed.

(2) If a party is not satisfied with a response under subsection (1), the party may bring a motion under section 9 requesting that the matter be settled by the Board.

Pre-hearing meeting

32 The Board may, on its own initiative or at the request of a party, direct that a pre-hearing meeting be held with the parties for one or more of the following purposes:

- (a) to determine the issues in question and the position of the parties, including matters relating to costs;
- (b) to recommend the procedures to be adopted with respect to the hearing;
- (c) to determine whether the parties may benefit from a settlement meeting to discuss the issues;
- (d) if an oral hearing or electronic hearing is to be held, to set the date, time and place for the oral hearing or electronic hearing and to fix the time to be allotted to each party to present evidence and argument;
- (e) to decide any other matter that may aid in the simplification or the fair and most expeditious disposition of the proceeding.

Technical meeting

33 The Board may direct the parties to participate in a technical meeting for the purpose of

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

Appropriate dispute resolution

34 Where the parties engage in an appropriate dispute resolution, as set out in the *Appropriate Dispute Guidelines, IL 2001-01*, as amended from time to time, published by the Board, the provisions of the relevant guidelines govern the appropriate dispute resolution.

Settlement meetings

35(1) If the parties have not engaged in an appropriate dispute resolution under section 34, the Board may direct the parties to participate in a settlement meeting for the purpose of settling one or more of the issues in a proceeding or for recommending procedures to be adopted with respect to the hearing.

(2) A settlement meeting may not be transcribed or form part of the record of a proceeding.

(3) The Board may appoint a person to chair or facilitate a settlement meeting.

(4) All persons attending a settlement meeting shall treat admissions, concessions, offers to settle and related discussions as confidential and without prejudice.

(5) Admissions, concessions, offers to settle and related discussions in a settlement meeting are not admissible in any proceeding without the consent of all affected parties.

Settlement proposal

36(1) Where some or all of the parties reach an agreement following a settlement meeting under section 35, the parties shall make and file a settlement proposal describing the agreement.

(2) The settlement proposal must identify for each issue those parties who agree with the settlement of the issue and those parties who do not agree with the settlement of the issue.

(3) The parties shall ensure that the settlement proposal contains or identifies sufficient evidence to allow the Board to make findings on the issues.

Effect of settlement proposal

37(1) After a settlement proposal is filed under section 36, the Board may

- (a) hold a hearing to determine whether to accept or reject the settlement proposal,
- (b) accept the settlement proposal, if it is in the public interest to do so and the evidence contained or identified in the settlement proposal is sufficient to allow the Board to make findings on the issues, or
- (c) reject the settlement proposal, if the Board is of the view that
 - (i) the evidence contained or identified in the settlement proposal is not sufficient to allow the Board to make findings on the issues, or
 - (ii) the public interest requires a hearing.

(2) If the Board rejects a settlement proposal under subsection (1)(c), the Board may direct the parties to make reasonable efforts to revise the settlement proposal.

Part 3 Hearings

No electronic hearing

38 The Board shall not hold an electronic hearing if a party satisfies the Board that holding an electronic hearing is likely to cause the party significant prejudice.

Notice to attend

39(1) The Board may, on its own initiative or at the request of a party, issue a notice requiring a person to attend an oral hearing or electronic hearing as a witness and to produce the documents and material set out in the notice.

(2) The provisions of the *Alberta Rules of Court* (AR 124/2010) relating to the payment of allowances to witnesses apply to oral hearings and electronic hearings.

(3) Despite subsection (2), the Board may increase the amount payable to an expert witness or in special circumstances where a witness attends an oral hearing or an electronic hearing as a result of a notice to attend.

AR 252/2007 s39;164/2010

Oath or affirmation

40 Unless the Board otherwise directs, a witness at an oral hearing or electronic hearing must be examined orally on oath or affirmation.

Witness panels

41(1) The Board may permit evidence to be given by 2 or more witnesses sitting as a panel.

(2) Questions addressed to a witness panel may be directed at specific members of the panel or the panel in general.

(3) Unless the Board otherwise directs, members of a witness panel may confer among themselves.

(4) Where a question is directed at a specific member of a panel and that member is not able to answer the question because of a lack of knowledge or qualifications, the Board may permit another member of the panel to answer the question.

Presenting evidence

42(1) Unless the Board otherwise directs, no documentary evidence may be presented at an oral hearing or electronic hearing unless the evidence was filed and served in accordance with section 17.

(2) A witness of a party presenting evidence at an oral hearing or electronic hearing shall

(a) confirm on oath or affirmation that the documentary evidence

(i) was prepared by the witness or under the witness's direction or control, and

(ii) is accurate to the best of the witness's knowledge or belief,

and

(b) unless the Board otherwise directs, confine the witness's testimony to matters set out in the documentary evidence or arising from evidence adduced in cross-examination.

(3) A witness may be

(a) cross-examined by or on behalf of a party, or

(b) examined by the Board or a member of the Board staff.

(4) During a recess of an oral hearing or electronic hearing, a witness who is under cross-examination may consult with the witness's counsel if it is necessary to respond to undertakings made before the Board.

(5) No argument may be received by the Board unless it is based on the evidence before the Board.

Hearings in absence of the public

43(1) Subject to subsections (2) and (3), all oral hearings and electronic hearings are open to the public.

(2) If the Board considers it necessary to prevent the disclosure of intimate personal, financial or commercial matters or other matters because, in the circumstances, the need to protect the confidentiality of those matters outweighs the desirability of an open hearing, the Board shall conduct all or part of the hearing in private.

(3) If all or any part of an oral hearing or electronic hearing is to be held in private, no party may attend the hearing unless the party files an undertaking stating that the party will hold in confidence any evidence heard in private.

Participation of Crown

44(1) The Crown may appear at an oral hearing or electronic hearing for one or more of the following purposes:

- (a) to present evidence;
- (b) to cross-examine witnesses;
- (c) to submit argument.

(2) Where the Crown intends to present evidence pursuant to subsection (1), the Crown shall do so in accordance with these Rules and any directions of the Board.

Submissions by Board staff

45 If, in the opinion of the Board, it is necessary or appropriate in the circumstances for a member of the Board staff or an expert hired by the Board to participate in a hearing, the member of the Board staff or the hired expert, as the case may be, may, in accordance with these Rules, do one or more of the following:

- (a) file a submission;
- (b) present evidence;

- (c) cross-examine witnesses;
- (d) submit argument;
- (e) be cross-examined by or on behalf of a party;
- (f) be examined by the Board or another member of the Board staff.

Arguments

46 Arguments must be in a form as directed by the Board.

Written hearings

47(1) Where the Board holds a written hearing, it may

- (a) dispose of the proceeding on the basis of the documents filed by the parties, or
- (b) require additional information and material from the parties before disposing of the proceeding.

(2) The Board may determine at any time during a written hearing that the proceeding must be disposed of by means of an oral hearing or electronic hearing.

Part 4 Review and Rehearing

Application for review

48(1) The Board may, on its own initiative or on application by a person, review an order, decision or direction made 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 the 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;
- (e) the applicant's name, address in Alberta, telephone number, fax number and, if available, e-mail address;

(f) if the applicant is represented by a representative, the representative's name, address in Alberta, 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, decision or direction of the Board was made.

(4) Where an application for review is made under section 40 of the Act, the application must contain a clear and concise statement describing the right the applicant for review has and the manner in which the applicant's right may be directly or adversely affected by the order, decision or direction of the Board on the initial application.

(5) The Board shall determine, with or without a hearing in respect of an application for review, the preliminary question of whether the order, decision or direction made by it should be reviewed.

(6) When determining the preliminary question, the Board shall grant an application for review,

- (a) with respect to a review of an order, decision or direction other than a review under section 40 of the Act, if the Board determines that,
 - (i) in the case where the applicant has alleged an error of law or jurisdiction or an error of fact, the applicant has, in the Board's opinion, raised a substantial doubt as to the correctness of the Board's order, decision or direction, or
 - (ii) in the case where the applicant has alleged new facts, a change in circumstances or facts not previously placed in evidence, the applicant has, in the Board's opinion, raised a reasonable possibility that new facts, a change in circumstances or facts not previously placed in evidence, as the case may be, could lead the Board to materially vary or rescind the Board's order, decision or direction,

or

- (b) with respect to a review under section 40 of the Act, if the Board determines that the applicant has, in the Board's opinion, shown that the order, decision or direction made by it on the initial application may directly and adversely affect the applicant's right.

(7) If the Board grants the application under subsection (5), it shall issue a notice of review, and a new hearing must be held in accordance with these Rules.

(8) A notice of review under subsection (7) must contain the same information as is contained in a notice of hearing.

Application for rehearing

49(1) The Board may, on its own initiative or on application by a person, rehear an application before deciding it.

(2) An application for a rehearing must be in writing and contain the following:

- (a) a clear and concise statement of the 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 will result from the decision on the application;
- (d) a brief description of the remedy sought;
- (e) the applicant's name, address in Alberta, telephone number, fax number and, if available, e-mail address;
- (f) if the applicant is represented by a representative, the representative's name, address in Alberta, telephone number, fax number and, if available, e-mail address.

(3) An application for a rehearing must be filed and served on the parties to the proceeding for which the original application was made.

(4) The Board shall grant an application for a rehearing if the Board, with or without a hearing, determines that the applicant has, in the Board's opinion, established that a rehearing is required.

(5) If the Board grants the application under subsection (4), it shall issue a notice of rehearing, and a hearing must be held in accordance with these Rules.

(6) A notice of rehearing under subsection (5) must contain the same information as is contained in a notice of hearing.

Correction of errors

50 The Board may correct typographical errors, errors of calculation and similar errors made in any of its orders, decisions or directions.

**Part 5
Costs****Costs**

51 In this Part,

- (a) “costs order” means an order of the Board awarding costs on a claim for costs;
- (b) “directive” means *Directive 31A, Energy Costs Claims* published by the Board;
- (c) “participant” means a local intervener as defined in section 28 of the Act;
- (d) “scale of costs” means the *Energy Resources Conservation Board Scale of Costs*, as amended from time to time, published by the Board.

Advance of funds request

52(1) A participant who intends to take part in a proceeding may, at any time during the proceeding, make a request to the Board for an advance of funds in accordance with the directive.

(2) The Board may award an advance of funds to a participant if the participant demonstrates a need for financial assistance to address relevant issues in the proceeding.

(3) If the Board awards an advance of funds to a participant under subsection (2), the Board may

- (a) advance the funds to the participant and
 - (i) set out the terms for repayment of the advance to the Board by the participant, or
 - (ii) direct the applicant to reimburse the Board for the funds advanced to the participant,

or

- (b) direct the applicant to advance funds to the participant and set out the terms for repayment of the advance to the applicant by the participant.

Budget to be filed

53 The Board may, at any time during a proceeding, require a participant to file a budget of the participant's anticipated costs in the proceeding in accordance with the directive.

Interim awards

54(1) A participant may apply to the Board for an award of interim costs incurred in a proceeding by filing an interim costs claim in accordance with the directive.

(2) A participant may claim interim costs only in accordance with the scale of costs.

(3) The Board may award interim costs to a participant if the Board is of the opinion that

- (a) the costs are reasonable and directly and necessarily related to the proceeding,
- (b) the proceeding in which interim costs are claimed is lengthy, and
- (c) the participant has demonstrated a need for financial assistance to continue to address relevant issues in the proceeding.

(4) If the Board awards interim costs to a participant under subsection (3), the Board may

- (a) pay the interim costs to the participant and
 - (i) set out terms for repayment of the interim costs to the Board by the participant if the Board varies or denies costs on a claim for costs filed by the participant at the close of the proceeding, or
 - (ii) direct the applicant to reimburse the Board for the interim costs paid to the participant,

or

- (b) direct the applicant to pay the interim costs to the participant and set out the terms for repayment of the interim costs to the applicant by the participant if the Board varies or denies costs on the claim for costs filed by the participant at the close of the proceeding.

Costs claim

55(1) A participant may apply to the Board for an award of costs incurred in a proceeding by filing a costs claim in accordance with the directive.

(2) A participant may claim costs only in accordance with the scale of costs.

(3) Unless otherwise directed by the Board, a participant shall

(a) file a claim for costs within 30 days after the proceeding is closed, and

(b) serve a copy of the claim on the other participants.

(4) An applicant may submit as part of the applicant's claim for costs a request to the Board to record in the applicant's hearing costs reserve account costs that are reasonable and directly and necessarily related to the proceeding.

(5) After receipt of a claim for costs, the Board may direct the participant who filed the costs claim to file additional information or documents with respect to the costs claimed.

Comments on costs claim

56 Unless otherwise specified by the Board,

(a) within 14 days of the deadline for the filing of a costs claim referred to in section 55, the applicant in the proceeding to which the costs relate shall file and serve on the participant who filed the costs claim a submission detailing any questions and comments on the costs claimed, and

(b) within 14 days of the receipt of the applicant's comments under clause (a), the participant shall file and serve on the applicant a reply respecting those comments.

Costs award

57(1) The Board may award costs, in accordance with the scale of costs, to a participant if the Board is of the opinion that

(a) the costs are reasonable 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 that participant's witness;
 - (b) made reasonable efforts to ensure that the participant's evidence was not unduly repetitive of evidence presented by another participant;
 - (c) made reasonable efforts to co-operate with other participants to reduce the duplication of evidence and questions or to combine the participant's submission with that of similarly interested participants;
 - (d) presented in oral evidence significant new evidence that was available to the participant at the time the participant 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 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) failed to comply with this Part.

Liability for costs

58 Unless the Board otherwise directs,

- (a) in a proceeding that relates to a specific licensee, operator or approval holder, the licensee, operator or approval holder shall pay the costs awarded to a participant, and
- (b) in a proceeding that relates to policies or concerns respecting the exploration, processing, development or transportation of energy resources, the Board may pay the costs awarded to a participant.

Costs order

59(1) Where the Board has awarded costs in a proceeding, the Board shall issue a costs order setting out the amount awarded and to whom and by whom the payment must be made.

(2) The Board shall serve a copy of the costs order on the participant making the claim and on the applicant.

(3) An applicant named in a costs order shall pay the amount awarded to the participant within 30 days of being served with a copy of the costs order under subsection (2).

Review request

60(1) A party to a costs order may, within 30 days of the date of service of the order, apply to the Board for a review of the order.

(2) An application for a review of a costs order must be made in accordance with section 48.

Part 6

Expiry and Coming into Force

Expiry

61 For the purpose of ensuring that this Regulation is reviewed for ongoing relevancy and necessity, with the option that it may be repassed in its present or an amended form following a review, this Regulation expires on June 15, 2016.

Coming into force

62 These Rules of Practice come into force on June 15, 2011.