



NEW BRUNSWICK
ENERGY & UTILITIES BOARD

COMMISSION DE L'ÉNERGIE ET DES SERVICES PUBLICS
NOUVEAU-BRUNSWICK

RULES OF PROCEDURE

Effective November 1, 2019

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New Brunswick Energy and Utilities Board

Rules of Procedure

1. **General**

1.1. Introduction

The New Brunswick Energy and Utilities Board has broad powers and responsibilities to inquire into, hear or determine any application, matter or thing over which it has jurisdiction. In so doing, the Board is the master of its own procedure and may give directions about process and procedure.

The Board has a legislated mandate to “ensure procedural fairness to all affected persons” in relation to matters that come before the Board. This obligation is supplemented by common law principles governing the rules of natural justice applicable to bodies that exercise delegated powers.

The Board’s Rules of Procedure are intended as a comprehensive, consolidated set of procedural rules governing matters that come before the Board that involve a hearing process. Applicable legislation and regulations prevail over these Rules and may contain procedural requirements not covered by these Rules.

The objective of these Rules is to provide guidance concerning Board procedure, and to document Board practice. This enhances the ability of the Board to ensure procedural fairness in all matters.

1.2. Applicability and Scope

1.2.1. These Rules apply to proceedings before the Board.

1.2.2. These Rules are available on the Board’s website, or from the Chief Clerk upon request.

1.2.3. At any time in a proceeding, and notwithstanding anything in these Rules, the Board may in its discretion dispense with or vary these Rules in whole or in part.

1.2.4. The Board may at any time in a proceeding make an order with respect to the procedure and practices that apply in the proceeding. Any such order shall prevail over these Rules for the purpose of such proceeding.

1.2.5. The Board may in its discretion extend or abridge the time fixed by these Rules or by the Board, on its own initiative or in response to a request by a party, either before or after the time so fixed has expired.

1.2.6. Where procedures are not provided for in these Rules, the Board may do whatever is necessary and permitted by law to enable it to adjudicate fairly, effectively and completely on the matter before it.

1.2.7. These Rules will be reviewed by the Board from time to time and revised as may be deemed necessary or desirable.

1.3. Interpretation

1.3.1. In these Rules:

“Act” means the *Energy and Utilities Board Act. (Loi)*

“Application” means an application made to the Board under any act of the Legislative Assembly, or any regulations made under any such act, or pursuant to these Rules. (*demande*)

“Board” means the New Brunswick Energy and Utilities Board and includes any Board panel of one or more Board members authorized to hear, determine or otherwise deal with matters, as may be applicable. (*Commission*)

“Chief Clerk” means the Chief Clerk of the Board or a member of Board staff acting in the absence of the Chief Clerk. (*greffière en chef*)

“Claim for Confidentiality” means a Claim for Confidentiality filed under Rule 6.4. (*demande de traitement confidentiel*)

“confidential information” includes any personal, business, public security or operational information within the knowledge or possession of a person which is accessible only by those authorized to have access, or any other information deemed by the Board to be confidential in nature. (*renseignements confidentiels*)

“Confidentiality Undertaking” means a Confidentiality Undertaking filed and served under Rule 6.4. (*engagement de confidentialité*)

“hearing” includes a pre-hearing conference, motion or a review, in which evidence or submissions are heard or received by the Board in person, in writing or via communications technology, as directed by the Board. (*audience*)

“Interrogatory” or “IR” means an Interrogatory served and filed under Rule 4.2. (*demande de renseignements*)

“IR Response” means an IR Response served and filed under Rule 4.2. (*réponse à une demande de renseignements*)

“Intervener” means a person who has been granted intervener status by the Board in accordance with Rule 3.2, including the Public Intervener. (*intervenant*)

“Intervener Request” means an Intervener Request filed under Rule 3.2. (*demande de statut d'intervenant*)

“Notice of Motion” means a Notice of Motion filed under Rule 4.3. (*avis de motion*)

“party” means, in respect of a proceeding, a person who makes an application, an appellant, an Intervener, and any person, Minister of the Crown, municipality or official who is deemed by legislation to be a party. (*partie*)

“Practice Directive” means a Board directive issued under Rule 1.4.1. (*directive de pratique*)

“proceeding” includes a review or investigation conducted by the Board pursuant to legislated authority, whether on its own motion or otherwise. (*instance*)

“Public Intervener” has the same meaning as ascribed in *An Act Respecting a Public Intervener for the Energy Sector*. (*intervenant public*)

“Rules” means these Rules of Procedure, including its forms, and “Rule” refers to a specified part of the Rules. (*règles*)

“written” or “in writing” refers to any document, notification or other communication capable of being stored, delivered, accessed or read using a physical or electronic format or technology. (*écrit ou par écrit*)

1.3.2. These Rules shall be liberally construed in the public interest to secure the most expeditious and just determination of every matter before the Board.

1.4. Practice Directives and Policies

1.4.1. The Board may from time to time issue a Practice Directive in relation to proceedings or types of proceedings, whether or not specifically referred to in these Rules.

1.5. Compliance with Rules

1.5.1. Where a party has failed to comply with a requirement of these Rules, an order under Rule 1.2.4, or a Practice Directive, the Board may grant all necessary relief, including the issuance of an order on such conditions as the Board considers appropriate, and may adjourn the proceeding until it is satisfied that there is compliance.

1.5.2. No proceeding or part of a proceeding is invalid by reason alone of an irregularity in form or procedure.

1.6. Form and Style of Documents

1.6.1. Any form or format provided under these Rules shall be used where applicable, with such variations as the circumstances require.

1.6.2. Where a form under these Rules requires that a party provide specific information in accordance with the form, the party shall provide such information or include an explanation why such provision is not applicable or not possible.

1.7. Language of Proceedings

1.7.1. The Board will administer proceedings in compliance with the applicable requirements of the *Official Languages Act*. Parties, witnesses, legal counsel and other persons taking part in proceedings shall be entitled to participate, both orally and in documents filed with the Board, in the official language or languages of their choice.

1.7.2. An application or Intervener Request shall indicate the official language in which the party or intended party intends to make submissions, present evidence, examine or cross-examine witnesses, or otherwise communicate at an oral hearing.

1.7.3. A document, written submission or written evidence that has been filed or submitted by a party, or by a person submitting a letter of comment, may, but is not required to be submitted by such party or person in both official languages. Each party shall be solely responsible for obtaining any translation of documents considered necessary for effective participation in the proceeding.

1.7.4. The Board may determine and notify all parties which of the official languages shall be the language of the proceeding. Despite this determination, a party, subject to Rule 1.7.2, will be entitled to:

- a) submit documents in accordance with the Board's filing schedule in the official language of that party's choice; and
- b) make submissions, present evidence, examine or cross-examine witnesses, or otherwise communicate at an oral hearing in the official language other than the language of the proceeding, subject to such conditions as the Board determines.

1.7.5. Where both official languages are to be used at an oral hearing, the Board shall make translation services available.

1.7.6. Where Rule 1.7.5. does not apply, any party may, at its own expense, make translation services available at an oral hearing, provided such party provide notification to the Board of its intention to do so at the pre-hearing conference in relation to that proceeding.

2. Proceedings and Filing and Service of Documents

2.1. Commencement of Proceedings

2.1.1. Subject to Rule 2.1.2, all proceedings shall be commenced by filing an Application in accordance with Rule 2.2 with the Chief Clerk.

2.1.2. Any proceeding initiated by the Board pursuant to its legislated authority shall be commenced by an order of the Board.

2.2. Applications

2.2.1. Every Application shall include or be accompanied by:

- a) the statutory provision(s) under which it is made;
- b) the nature of the order or decision applied for;
- c) relevant supporting or explanatory facts and information to be tendered as evidence, including any minimum filing requirements;
- d) the names, addresses, telephone numbers and electronic mail addresses of the applicant's authorized representatives;
- e) the name, address, telephone number and electronic mail address of the applicant's legal counsel, if any, representing the applicant in relation to the application; and
- f) the official language in which the applicant intends to proceed.

2.2.2. Every Application shall be signed by the applicant, the authorized representative of the applicant, or the applicant's counsel. Wherever possible, for ease of reference, supporting or explanatory facts and information that are filed with an application shall be paginated and each line shall be consecutively numbered, beginning with the number 1 on each page.

2.2.3. The Board may, by written notice to the applicant, require the filing of such further information, particulars or documents as may be required to satisfy the requirements of this Rule 2.2.

2.3. Order and Notice of a Proceeding

- 2.3.1. Upon the commencement of a proceeding, the Board shall assign a Board matter number and shall issue a notice of a pre-hearing conference, if applicable, in both official languages.
- 2.3.2. The Board may publish, or may require an applicant to publish and serve a notice of a pre-hearing conference, and the applicant shall file an affidavit with the Board that confirms the details of any required publication.

2.4. Filing of Documents

- 2.4.1. All documents filed with the Board shall be directed to the Chief Clerk, in such manner as may be directed by the Board. The Board will acknowledge receipt of any document in writing.
- 2.4.2. A party shall file documents in Portable Document Format (PDF), Microsoft Excel format, or such other format as permitted by the Chief Clerk.
- 2.4.3. A party may file documents in paper format if, in the opinion of the Chief Clerk, it is not practical or possible for the party to file by other means.
- 2.4.4. The Board may, in its discretion, accept paper documents filed by a party during the course of an oral hearing, provided that, subject to Rules 6.4, copies shall be at the same time distributed by the party to the Chief Clerk, each panel member, the court reporter, Board staff present, any translator, each other party, and any other person present requesting a copy of same.
- 2.4.5. Any document filed with the Board after 4:30 p.m. or on a Saturday, Sunday or holiday shall be considered as having been filed on the next business day.
- 2.4.6. Despite the foregoing, a document shall not be considered as having been filed until the Board has acknowledged receipt in accordance with Rule 2.4.1, or the document has been posted on the Board's website in relation to the proceeding.
- 2.4.7. The Board may reject or disregard any document which has not been filed in accordance with a notice of pre-hearing conference or filing schedule approved by the Board.
- 2.4.8. Documents shall conform to any standards or guidelines published by the Board, appropriate to the technology or media by which the document is created or stored.

2.5. Service of Documents

- 2.5.1. Where any document is required to be served on a person or entity, service may be effected by personal delivery, courier, e-mail, facsimile, postal service or other reliable means of receiving documents available to the person or entity being served.
- 2.5.2. Whenever required, service of a document may be proven to the Board by affidavit, oral testimony, or by a written acknowledgement or receipt by the person or an authorized representative of the entity being served. Proof of service of a document will only be sufficient if it indicates the method of service, and the date and time such document was actually received by the person being served.
- 2.5.3. Any document received after 4:30 pm or on a Saturday, Sunday or holiday shall be considered as having been served on the next business day.

3. Participation in Board Proceedings

3.1. Level of Participation

3.1.1. A person who wishes to participate in a proceeding shall comply with the Rules applicable to the intended level of participation, as follows:

- a) to participate as an intervener, with Rule 3.2;
- b) to provide comments, other than as a party, with Rule 3.3; or
- c) to participate in any public forum organized by the Board, with Rule 3.4.

3.1.2. Any person wishing to access any document filed in a proceeding that is not confidential in nature may do so through the Board's website or by written request to the Chief Clerk.

3.1.3. Board staff shall be entitled as appropriate, to participate in a proceeding.

3.2. Interveners

3.2.1. Except as otherwise provided in a Practice Directive, a person wishing to participate as a party to a proceeding shall apply for intervener status by filing an Intervener Request with the Board. The proposed Intervener shall serve a copy of the Intervener Request on the applicant, if any, on or before the date directed by the Board.

3.2.2. A person filing an Intervener Request must have a substantial interest in the proceeding and intend to participate actively and responsibly.

3.2.3. Rules 3.2.1 and 3.2.2 do not apply to any person deemed by legislation to be a party to a proceeding, but such person shall provide the Chief Clerk with a written confirmation if that party intends to actively participate in the proceeding, together with contact information.

3.2.4. An Intervener Request shall contain the following:

- a) a description of the proposed Intervener;
- b) the nature of the proposed Intervener's interest in the proceeding and why that interest should justify the granting of Intervener status;
- c) the nature and scope of the intended participation in the proceeding and the issues such participation is intended to address;
- d) the name, address, telephone number and electronic mail address of the proposed Intervener or the Intervener's authorized representative;
- e) the name, address, telephone number and electronic mail address of the proposed Intervener's legal counsel, if any; and
- f) the official language in which the proposed Intervener intends to proceed.

3.2.5. A party or proposed intervener may, no later than one day prior to the pre-hearing conference set by the Board, serve an objection to an Intervener Request, with reasons, on the person who has filed the Intervener Request, and shall file the objection with the Board and serve a copy on all other parties.

3.2.6. A person who has filed an Intervener Request may make written or oral submissions to the Board in response to any objection under Rule 3.2.5.

3.2.7. The Board may hear submissions relating to an objection under Rule 3.2.5 at the pre-hearing conference or at such other time as it determines, and shall notify the person who

filed the Intervener Request, and all parties to the proceeding, of its decision whether to allow or disallow the Intervener Request, as soon as practicable.

3.3. Participation by Comment

3.3.1. A person who is not a party to a proceeding or does not wish to be an Intervener, but who wishes to make comments to the Board regarding a proceeding, may file with the Board a letter of comment, prior to any date set by the Board for such purposes. All letters of comment shall become part of the public record in the proceeding. Personal contact information shall be provided to the Chief Clerk, but will not become part of the public record.

3.3.2. A letter of comment shall:

- a) provide the person's name and place of residence;
- b) describe the nature of the person's interest in the proceeding;
- c) include the person's comments with respect to the proceeding; and
- d) indicate whether the person wishes to make an oral presentation.

3.3.3. The Board may provide all parties with a copy of any letter of comment received by the Board.

3.3.4. The Board may in its discretion allow a person who has filed a letter of comment to make an oral presentation, and will arrange a time to be heard through the Chief Clerk.

3.4. Public Forum

3.4.1. The Board may hold one or more public forums prior to, during or after the formal hearing of any proceeding, to allow members of the public to make oral submissions to the Board in relation to the subject matter of the proceeding.

3.4.2. If the Board decides to hold a public forum, it will inform all parties and will publish such public notice as it deems appropriate.

3.4.3. A person who wishes to make an oral presentation shall register with the Board by contacting the Board by telephone, mail or email at general@nbeub.ca on or before the date specified in the Board notice, and providing the Board with contact information and the official language in which the person proposes to make the presentation.

3.4.4. A party to a proceeding may attend, but shall not be entitled to make a presentation at a public forum held in relation to that proceeding.

3.4.5. The Board may arrange to record and prepare a transcript of oral submissions, to be published on the Board's website within a reasonable time after it becomes available.

3.4.6. At the beginning of any public forum, the Board may issue directives concerning the conduct of the forum, including the order of presentation, time allotments and other matters, to ensure that the forum is conducted in a fair and efficient manner.

4. Interim Procedures

4.1. Pre-Hearing Conference

4.1.1. The Board may order that a pre-hearing conference be held to allow parties and Board staff to make representations about the procedure to be followed and any other relevant matters, including:

- a) considering any Intervener Request that has not already been disposed of;
- b) considering the dates by which any steps in the proceeding are to be taken or begun, including interrogatories and responses, evidence filings, and motions;
- c) considering whether the proceeding will be by way of oral hearing or written hearing;
- d) considering the language of the proceeding and any requirement for translation services;
- e) considering the estimated duration of the hearing, if an oral hearing is to be held;
- f) establishing the dates and the venue of any oral hearing; and
- g) deciding on any other matter that may aid in the simplification or the just and most expedient disposition of the proceeding.

4.1.2. Any person who has filed an Intervener Request in respect of which the Board has not yet made a determination may participate in a pre-hearing conference unless and until such time as the Board denies that person Intervener status.

4.2. Interrogatory Process

4.2.1. The Interrogatory process is intended to:

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

4.2.2. A party may direct an Interrogatory to any other party who has filed written evidence in a proceeding, in relation to any matter that is relevant to the proceeding.

4.2.3. An Interrogatory shall:

- a) be directed to the party from whom the response is sought;
- b) be numbered consecutively in respect of each IR, including any prior IRs directed by that party;
- c) contain a specific reference to the evidence sought to be clarified or other matter to be addressed;
- d) be grouped together in a single document according to the issues to which they relate; and
- e) contain specific requests for clarification of a party's evidence, documents or other information relevant to the proceeding.

4.2.4. Within the time limit fixed by the Board, every IR shall be served on the party to whom it is directed and a copy of the IR shall be filed with the Board and served on all other parties.

4.2.5. A party served with an IR shall, within any time limit fixed by the Board, file an IR Response with the Board and serve the response on the party directing the IR and on all other parties.

4.2.6. An IR Response shall be addressed to the applicable party and shall:

- a) repeat each IR at the beginning of each response;
- b) be numbered to correspond with the appropriate IR;
- c) begin each IR Response on a separate page; and

d) provide a full and adequate response to each IR.

4.2.7.A party who is unable or unwilling to provide a full and adequate response, shall set out, as part of an IR Response:

- a) reasons in support of any contention that the Interrogatory is not relevant;
- b) reasons for the unavailability of information claimed by the party to be unavailable or that cannot be provided with reasonable effort; or
- c) an explanation of why such a response cannot be given.

4.2.8.A party or Board staff, if not satisfied with an IR Response, may seek direction from the Board by Notice of Motion.

4.3. Motions

4.3.1.Any matter that arises in the course of a proceeding that requires an interim decision or order of the Board shall be brought before the Board by a Notice of Motion.

4.3.2.A Notice of Motion and any supporting documents shall be filed with the Board and served on all other parties to the proceeding in accordance with any schedule determined by the Board.

4.3.3.A party who wishes to respond to a Notice of Motion may file and serve on all other parties, prior to the motion's hearing date, a written response, with an indication of any evidence upon which the party seeks to present or rely.

4.3.4.Despite the foregoing, any matter, motion, or response to a motion that arises in the course of an oral hearing that could not reasonably have been brought before the Board in accordance with this Rule 4.3 may be brought orally, and in such case, will be dealt with as the Board determines.

4.3.5.The Board, in hearing a motion, may permit oral or other evidence in addition to the supporting documents accompanying the Notice of Motion or response.

4.4. Dispute Resolution

4.4.1.The Board may direct the parties to participate in a dispute resolution process (DR process) or to make written submissions to the Board for the purposes of:

- a) reviewing and clarifying an application, intervention or Interrogatory;
- b) identifying, clarifying or simplifying issues, including interim issues;
- c) resolving or addressing procedural or evidentiary matters; or
- d) addressing any other matter that the Board directs.

4.4.2.The DR process shall be open only to parties and their representatives, unless the Board directs or the parties agree otherwise.

4.4.3. A Board member shall not participate in a DR process, and the DR process shall not be transcribed or form part of the record of a proceeding.

4.4.4. All persons attending a DR process shall treat admissions and related discussions as confidential and shall not disclose them outside of the DR process, except as may be agreed.

- 4.4.5. The parties may submit a written summary or offer oral submissions of any DR process to the Board, outlining any areas of agreement or consensus or any resolution of issues as a result of the process.
- 4.4.6. The Board will consider any written summary or oral submission prepared in response to a direction under this Rule and may issue an order or direction in relation to same.

5. Hearings

5.1. *Type of Hearing*

- 5.1.1. The Board may hold a hearing in either of the following formats:
- a) an oral hearing, conducted in accordance with Rule 5.2, requiring that evidence be presented in accordance with Rule 6; or
 - b) a written hearing, permitting written evidence and submissions of each party to be filed with the Board and served on all other parties.
- 5.1.2. In the case of a written hearing, the Board may dispose of the application on the basis of the filed documents before it, or may require additional information or submissions to enable the Board to obtain a full and satisfactory understanding of the subject-matter of the proceeding.
- 5.1.3. The Board may, at its discretion, conduct a hearing in person, in writing or by teleconference, video conference or by any other electronic means.

5.2. *Conduct of Oral Hearings*

- 5.2.1. Oral hearings will be conducted according to the following order of events, unless otherwise directed by the Board:
- a) The applicant will present direct evidence through each of its witnesses or witness panels, which shall include the adoption of all pre-filed evidence, and which may include an opening statement of each witness or witness panel.
 - b) In the order of precedence determined by the Board, each Intervener, followed by Board counsel, may cross-examine each of the applicant's witnesses or witness panels as they are presented.
 - c) In the same order of precedence or as determined by the Board, each Intervener and the Board will present its direct evidence, if any, through each of its witnesses or witness panels, which shall include the adoption of all pre-filed evidence, and which may include an opening statement.
 - d) The applicant, followed by each other party in the same order of precedence as set out in (b), may cross-examine Intervener and Board witnesses or witness panels as they are presented.
 - e) The applicant will present its closing submission, followed by any questions about the submission from members of the Board.
 - f) Other parties, in such order as determined by the Board, will present closing submissions, followed by any questions about each submission from members of the Board.

- g) The Board may permit rebuttal submissions in such order as it deems appropriate, limited to matters raised in the parties' submissions.
- h) Following confirmation that the proceeding record is complete, the hearing will adjourn or conclude for Board deliberations.

5.2.2. Any opening statement that a witness or witness panel intends to make shall, at least one business day before the presentation of such witness or witness panel, be filed with the Board and served on all other parties by the party calling the witness or witness panel.

5.2.3. Members of the Board may direct questions to a witness or witness panel at the conclusion of all direct, cross and re-direct examination of the witness or witness panel, for the purpose of clarifying the testimony, or at any point at which earlier clarification is required.

5.3. Media Activity at Hearings

5.3.1. Audio and video recording, and photography of a public oral hearing by the media may be permitted on conditions the Board considers appropriate, as directed by the Board.

5.3.2. The Board may refuse to permit the recording or taking of photographs for all or any part of an oral hearing, if such activity would inhibit witnesses or disrupt the proceeding, as determined by the Board.

6. Evidence

6.1. Written Evidence

6.1.1. All tendered written evidence filed with the Board in relation to an oral hearing under Rule 5.1.1 a) shall be supported by the testimony of the person or persons who prepared the evidence or under whose direction or control it was prepared attesting that the evidence is accurate to the best of that person's knowledge and belief.

6.1.2. All tendered written evidence filed with the Board in relation to a written hearing under Rule 5.1.1 b) shall be supported by an affidavit of the person or persons who prepared the evidence or under whose direction or control it was prepared attesting that the evidence is accurate to the best of that person's knowledge and belief.

6.1.3. Tendered written evidence filed with the Board shall be in either question-and-answer form or narrative form. Wherever possible, written evidence shall be paginated and each line of written evidence shall be consecutively numbered, beginning with the number 1 on each page.

6.1.4. Written evidence filed with the Board shall be in either paper form, PDF, Microsoft Excel format, or such other format as permitted by the Chief Clerk.

6.2. Evidence at an Oral Hearing

6.2.1. A party who intends to present evidence at an oral hearing shall, within such time limit as the Board may fix, file with the Board and serve on all other parties written evidence including:

- a) the position of the party on the issues in the hearing; and
- b) particulars regarding the name, title, position and other credentials of each witness who will address evidence on behalf of the party and the issues that the witness will address at the hearing.

6.2.2. Witnesses at an oral hearing shall be examined under oath or solemn affirmation.

6.2.3. Each witness referred to in Rule 6.2.1 b) shall confirm at the hearing or by affidavit, that any written evidence of that witness was prepared by the witness or under the direction and control of the witness and is accurate to the best of the knowledge and belief of the witness.

6.2.4. A witness may be cross-examined on any evidence and on any matter that is relevant to the proceeding.

6.2.5. A party who intends to refer to a document exceeding two pages that has not previously been filed with the Board shall not put the document in evidence or use it in the cross-examination of a witness, unless the witness has been provided with a copy of the document at least one business day in advance, together with a brief summary of its intended use.

6.2.6. Except during examination or cross-examination, there shall be no communication in relation to the proceeding between any person and a witness under examination or cross-examination from the time when the witness is sworn or affirmed until that witness has been excused, unless it is necessary to comply with undertakings, to deal with procedural matters, or for other reasons with leave of the Board.

6.3. Expert Evidence

6.3.1. A party may engage, and two or more parties may jointly engage, one or more experts to provide opinion evidence in a proceeding on issues that pertain to the expert's area of expertise.

6.3.2. An expert shall assist the Board by giving evidence that is impartial, fair and objective.

6.3.3. A party shall, at the time any expert evidence is filed, file with the Board and serve on all other parties the following:

- a) the expert's name, business name and address, and general area or areas of expertise;
- b) the issues to which the expert's evidence relates;
- c) the expert's qualifications, including the expert's relevant educational and professional experience in respect of the issues to which the expert's evidence relates;
- d) the particular area or areas of expertise for which the party seeks, or will seek, a declaration from the Board;
- e) whether the expert has been previously qualified in the same or similar areas of expertise by the Board or by any other administrative tribunal or court;

- f) in the case of evidence that is provided in response to another expert's evidence, a summary of the points of agreement and disagreement with the other expert's evidence; and
- g) an Expert Witness Acknowledgement.

6.3.4.A party who intends to challenge the qualifications of another party's proposed expert shall, within two business days prior to the commencement of the hearing, file with the Board and serve on all other parties, notice of such intention.

6.4. Confidential Information

6.4.1.The Board may determine whether any information obtained by the Board in the course of performing the Board's duties is confidential information and whether, in the public interest, such information should be published or revealed in any manner, in accordance with section 34 of the Act or any other applicable legislation.

6.4.2.A party or Board staff may:

- a) file a document with the Board without serving it on the other parties;
- b) file a document with the Board and serve only a redacted version of the document on the other parties; or
- c) object to the filing of a document or to the inclusion of information within a document, where the filing and service of such document would otherwise be required of that party;

if that party or Board staff, at the same time files a Claim for Confidentiality with the Board, requesting that the document or the redacted information in the document be protected under section 34 of the Act, and serves the Claim for Confidentiality on all other parties.

6.4.3.A party or Board staff who has been served with a Claim for Confidentiality may file an objection with the Board and shall serve a copy of the objection on all other parties to the proceeding.

6.4.4.An objection to a Claim for Confidentiality shall address the reasons for the objection, including:

- a) whether the information in question is confidential in nature;
- b) why the publication or revelation of the information in question to the public is necessary in the public interest; or
- c) whether the limited disclosure of the information in question to other parties to the proceeding, or their designated recipients, should be permitted.

6.4.5.If an objection to a Claim for Confidentiality seeks limited disclosure to designated recipients, it shall list the names and positions of the proposed designated recipients, and shall contain reasons why each proposed designated recipient requires access to the information in question.

6.4.6.Upon receipt of an objection to a Claim for Confidentiality the Board will:

- a) afford the party claiming confidentiality an opportunity to reply in writing to the objection, to be filed with the Board and served on all other parties at least one business day prior to the date set under paragraph b) below; and

- b) set a time date and place for a public interest hearing at which time the Claim for Confidentiality and any objection will be considered.

6.4.7. The Board may, in relation to any document in relation to which a Claim for Confidentiality has been made, order one or more of the following, as appropriate:

- a) that the document be filed or remain on file with the Board and protected from being published or revealed to the public or to any party to the proceeding;
- b) that the document be published or revealed to the public;
- c) that the document in a redacted form be placed on the public record so as to prevent confidential information therein from being published or revealed to the public;
- d) that a copy of the document or redacted version of the document be provided to such other parties' designated recipients, and upon such conditions, including the provision of a Confidentiality Undertaking as the Board may direct;
- e) that the document be made available for inspection by other parties' designated recipients, but without retaining a copy of the document, upon such conditions, including the provision of Confidentiality Undertakings as the Board may direct; and
- f) any other order as necessary in the public interest.

6.4.8. Any filed document which contains confidential information shall be identified by the Board as confidential in any list of documents or exhibits produced by the Board.

6.4.9. Any Confidentiality Undertaking signed by a party's designated recipient shall be filed with the Board and served on the party whose confidential information it seeks to protect.

6.4.10. It shall not be necessary for any member of the Board or any Board staff to provide, or to be covered under a Confidentiality Undertaking, in order to have access to any confidential information in a document or in the course of a hearing.

6.4.11. Subject to Rule 6.4.13, where the Board makes an order under Rule 6.4.7, the party who filed the document may, prior to the Board implementing such order, request that it be withdrawn.

6.4.12. The Board shall not implement an order under Rule 6.4.7 until a period, as determined by the Board, has lapsed after a copy of the order has been served on the party who filed the document to which the order relates.

6.4.13. The ability to request the withdrawal of information under Rule 6.4.11 does not apply to information that was required to be produced by an order of the Board.

6.5. In Camera Hearings

6.5.1. All oral hearings shall be open to the public except to the extent that confidential information may be disclosed, and where the Board is not of the opinion that publication or revelation of such confidential information is necessary in the public interest under section 34 of the Act.

6.5.2. The Board, on its own initiative or at the request of a party, may require all or a part of an oral hearing to be *in camera*, in the absence of the public and in the absence of any party or person who is not authorized under a Confidentiality Undertaking or otherwise, to have access to the confidential information to be reviewed before the Board.

6.6. *Transcripts of Oral Hearings*

6.6.1. The Board may arrange for the recording, preparation and publication, on the Board's website, of transcripts of oral hearings, pre-hearing conferences and motion hearings. Any *in camera* portions will not be published.

6.6.2. Any transcript arranged under Rule 6.6.1 will be transcribed in the language spoken during the hearing and a translation thereof will not be provided by the Board.

7. Orders and Decisions

7.1. *Issuance of Orders and Decisions*

7.1.1. Any decision, order, directive or notice signed by the Chief Clerk or by any other person authorized by the Board shall be considered to be a decision, order, directive or notice of the Board.

8. Reviewing, Rescinding, Varying and Rehearing

8.1. *Application*

8.1.1. An application to review, rescind, or vary an order under section 43 of the Act, or to rehear an application under section 44 of the Act shall contain:

- a) a concise statement of the facts;
- b) the grounds that the applicant considers sufficient, including:
 - i. any error of law or of jurisdiction,
 - ii. changed circumstances or new facts that have arisen since the close of the original proceeding, or
 - iii. facts that were not placed in evidence in the original proceeding and that were then not discoverable by reasonable diligence;
- c) any prejudice or damage that has resulted or will result from the order; and
- d) the relief sought.

8.1.2. Unless otherwise determined by the Board, the evidentiary record of a proceeding is considered to be closed at the completion of all closing submissions, including rebuttal submissions of the proceeding and confirmation by the Board that the record is complete.

8.2. *Disposition of an Application*

8.2.1. Upon receipt of an application under Rule 8.1.1, the Board may:

- a) dismiss the application if the Board is of the view that the applicant has not raised sufficient grounds; or
- b) order a review or rehearing and give such directions as the Board considers necessary.

8.2.2. Before making a determination under Rule 8.2.1 the Board may issue directions on procedure, including giving interested persons the opportunity to make submissions on the merits of rescinding or varying the Board's order, or of a rehearing.

8.2.3. An applicant under Rule 8.1.1 shall serve a copy of any directions on procedure on all parties to the original proceeding.

8.2.4. An interested person who files a submission with the Board shall serve a copy on the applicant under Rule 8.1.1 and on all parties to the original proceeding.

8.2.5. The applicant under Rule 8.1.1 shall be given an opportunity to reply to all submissions.

8.2.6. The applicant under Rule 8.1.1 shall file with the Board a copy of any reply and shall serve a copy of that reply on all parties to the original proceeding and on any interested person who has filed a submission.

8.3. Stay Pending Review

8.3.1. Any party may apply to the Board for an order staying a decision or order of the Board, pending the outcome of a review by the Board.

8.3.2. An application for a stay shall be in writing, signed by the applicant or the applicant's authorized representative, filed with the Board and served on all parties to the original proceeding.

8.3.3. Upon receipt of an application for a stay, the Board may:

- a) make an order staying all or part of the order, decision or original proceeding;
- b) dismiss the application for a stay; or
- c) issue directions on procedure inviting submissions from interested persons on whether or not a stay should be granted.

8.3.4. Directions on procedure issued pursuant to Rule 8.3.3 may require that:

- a) the applicant for a stay shall serve a copy of the directions on procedure on all parties to the original proceeding;
- b) an interested person filing a submission with the Board shall serve a copy of the submission on the applicant for a stay and all parties to the original proceeding;
- c) the applicant for a stay be given an opportunity to reply to any submissions; and
- d) the applicant for a stay shall file a copy of any reply with the Board and serve it on all parties to the original proceeding.

9. Forms

The forms as set out in the following pages are prescribed for use in Board proceedings.

NEW BRUNSWICK ENERGY AND UTILITIES BOARD

APPLICATION

(Rule 2.2)

This is an Application by: [Name of Applicant]

In Accordance with: [State legislation provision(s) or regulation(s) under which application is being brought – e.g., Subsection 103(1) of the *Electricity Act*, SNB 2013 c. 7]

The Applicant applies to the Board for the following:

1. [state in separate paragraphs the specific order(s), decision(s), rulings or other relief applied for];
- 2.

The Applicant is filing, at the same time as this Application, relevant supporting or explanatory information to be tendered as evidence.

The authorized representatives of the Applicant are:

[Name, Title]
[Applicant Company]
[Mailing address]
[Telephone number]
[e-mail address]

[Name, Title]
[Company- Indicate if acting as Legal Counsel for Applicant]
[Mailing address]
[Telephone number]
[e-mail address]

The Applicant intends to participate in the [official language of choice] language.

DATED at [Place] the day of , 20xx.

[APPLICANT NAME]

[Signature of Authorized Representative]
[Name]
[Title of Auth'd Rep]

Matter No.

NEW BRUNSWICK ENERGY AND UTILITIES BOARD

INTERVENER REQUEST

(Rule 3.2)

In Relation to an Application by: [Name of originating Applicant in this Matter]

In Accordance with: [State legislation provision(s), as appears in the original application]

TO: The New Brunswick Energy and Utilities Board

[Name of person requesting intervener status] (“Proposed Intervener”) wishes to actively participate in the above-noted proceeding, and makes this Intervener Request in accordance with Rule 3.2 of the Board’s Rules of Procedure.

The Proposed Intervener states that [it, he, she] has a substantial interest in the above-noted proceeding and intends to participate actively and responsibly in the proceeding.

1. [describe the Proposed Intervener – e.g., nature of business, and relationship to the subject matter of the application].
2. [describe nature of Proposed Intervener’s interest in the proceeding and the issues the Proposed Intervener intends to address and the scope of the intended participation in the proceeding – may use several numbered paragraphs if necessary].

The authorized representative(s) of the Proposed Intervener is/are:

[Name, Title]
[Company, if applicable]
[Mailing address]
[Telephone number]
[e-mail address]

[Name, Title]
[Company- Indicate if acting as Legal Counsel for Applicant]
[Mailing address]
[Telephone number]
[e-mail address]

The Proposed Intervener intends to participate in the [official language of choice] language.

DATED the day of , 20xx.

[PROPOSED INTERVENER NAME]

[Signature of Authorized Representative]
[Name & Title of Authorized Rep]

NOTE: A copy of this Intervener Request must also be served on the Applicant.

Matter No.

NEW BRUNSWICK ENERGY AND UTILITIES BOARD

INTERROGATORY

(Rule 4.2)

In Relation to an Application by: [Name of originating Applicant in this Matter]

In Accordance with: [State legislation provision(s), as appears in the original Application]

TO: [Responding Party Name (Acronym)]

FROM: [Requesting Party Name (Acronym)]

[Resp Accrn (Req Accrn.)] _____ IR- 1 _____ [Date of IR]

Reference: [Cite (and quote if applicable) Responding Party's evidence which IR seeks to clarify]

Question(s):

1. [question or request for further information or particulars]
2. [additional requests relating to the cited reference in separate numbered questions]

[Resp Accrn (Req Accrn.)] _____ IR- 2 _____ [Date of IR]

Reference:

Question(s):

- 1.
- 2.

Matter No.

NEW BRUNSWICK ENERGY AND UTILITIES BOARD

INTERROGATORY RESPONSE
(Rule 4.2)

In Relation to an Application by: [Name of originating Applicant in this Matter]

In Accordance with: [State legislation provision(s), as appears in the original Application]

RESPONDING TO: [Requesting Party Name (Acronym)]

FROM: [Responding Party Name (Acronym)]

[Resp Accrn (Req Accrn.) IR- 1 Date of IR Response]

Reference: [repeat reference/quote exactly as appears in the IR to which this responds]

Question(s):

- 1. [repeat question or request for further information or particulars exactly as appears in the IR question to which this responds]
- 2. [repeat additional questions etc., as above]

Response(s):

- 1. [provide answer to corresponding question above]
- 2. [provide additional answers as above]

[Resp Accrn (Req Accrn.) IR- 2 Date of IR Response]

Reference:

Question:

Response:

Matter No.

NEW BRUNSWICK ENERGY AND UTILITIES BOARD

NOTICE OF MOTION

(Rule 4.3)

In Relation to an Application by: [Name of originating Applicant in this Matter]

In Accordance with: [State legislation provision(s), as appears in the original Application]

TO: The New Brunswick Energy and Utilities Board

AND TO: All Parties in the above-noted matter

[Name of Party bringing Motion] intends to make a motion before the Board at the Motions Day hearing on [Date] seeking an order [detail the order sought from the Board].

The basis for the Motion is as follows:

1. [set out in numbered paragraphs the factual basis and arguments to support the motion]
- 2.
- 3.

[Name of Party bring Motion] intends to introduce the following evidence in support of the Motion:

1. [describe and attach evidentiary items, if applicable]

Dated the day of , 20xx.

[MOVING PARTY'S NAME]

[Signature of Authorized Representative]

[Name &
Title of Auth'd Rep]

Matter No.

NEW BRUNSWICK ENERGY AND UTILITIES BOARD

EXPERT WITNESS ACKNOWLEDGEMENT

(Rule 6.3)

In Relation to an Application by: [Name of originating Applicant in this Matter]

In Accordance with: [State legislation provision(s), as appears in the original Application]

I, [name of expert] of [name of municipality, province/state, etc.] hereby confirm that:

1. I have been engaged by or on behalf of [name of party or parties to the matter] to provide evidence in relation to the above-noted proceeding before the New Brunswick Energy and Utilities Board.
2. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
 - a) to provide opinion evidence that is fair, objective and non-partisan;
 - b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
 - c) to provide such additional assistance as the Board may reasonably require, to determine a matter in issue in this proceeding.
3. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Dated the day of , 20xx.

[Signature of Witness]

Matter No.

NEW BRUNSWICK ENERGY AND UTILITIES BOARD

CLAIM FOR CONFIDENTIALITY

(Rule 6.4)

In Relation to an Application by: [Name of originating Applicant in this Matter]

In Accordance with: [State legislation / regulation provision(s), as appears in the original Application]

[Name of party seeking confidentiality protection] requests that the attached documents being filed with the Board and described below, be held in confidence by the Board pursuant to Section 34 of the *Energy and Utilities Board Act*:

1. [List numerically a non-confidential description of each document in relation to which confidentiality is claimed] [Include if applicable: A redacted version of this document is attached to this request for filing, and has been served on all other parties to the above-noted proceeding.]
- 2.

Reasons for Claim of Confidentiality

The nature of the confidential information contained in the above documents, and the reasons for this claim for confidentiality are as follows:

1. [Provide, for each item (or each group of items) listed above, details of the nature of the confidential information and reasons for this claim.]
- 2.

Documents to be Provided

[Name of party seeking confidentiality protection] will provide non-redacted, confidential copies of those documents listed below to those parties identified below who will have executed, filed and delivered a Confidentiality Undertaking on mutually acceptable terms:

Documents:

1. [List numerically documents which may be disclosed pursuant to a Confidentiality Undertaking, or state: "All documents referred to in this Claim for Confidentiality"]
- 2.

Parties:

1. [List parties' names]
- 2.

Dated the day of , 20xx.

[CLAIMANT PARTY'S NAME]

[Name &
Title of Authorized Representative]

Matter No.

NEW BRUNSWICK ENERGY AND UTILITIES BOARD

CONFIDENTIALITY UNDERTAKING

(Rule 6.4)

In Relation to an Application by: [Name of originating Applicant in this Matter]

In Accordance with: [State legislation/ regulation provision(s), as appears in the original Application]

THIS AGREEMENT is entered into by [Name of party(s) or individual(s) making the disclosure] (**Disclosing Party**)

and

[Name of party(s) or individual(s) making the undertaking] (**Recipient**).

IN CONSIDERATION of the provision of the Restricted Information (as defined herein) and the covenants herein contained and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the Recipient hereby covenants and agrees with the Disclosing Party as follows:

1. Definition: The Recipient agrees that the following information disclosed by the Disclosing Party to the Recipient will be considered and referred to collectively in this Agreement as the “Restricted Information”:

[Precisely describe the Restricted Information to be covered by this document]

2. Non-disclosure and Non-use of the Restricted Information and No Copies: The Recipient will not disclose, publish, or disseminate the Restricted Information to anyone other than those of its employees with a need to know, its solicitors, consultants and advisers and the Recipient agrees not to provide the Restricted Information to any such person unless and until such a person has executed a Confidentiality Undertaking identical in form and substance to this Agreement and has delivered such executed agreement to the New Brunswick Energy and Utilities Board (NBEUB) and the Disclosing Party. This does not preclude the discussion of Restricted Information amongst the individuals who sign this form of agreement. The Recipient agrees to accept the Restricted Information for the sole purpose of evaluation and use in connection with a proceeding currently before the NBEUB being NBEUB Matter [***] (Proceeding). The Recipient agrees not to use the Restricted Information otherwise for its own or any third party’s benefit without the prior written approval of authorized representatives of the Disclosing Party. Within 10 business days of the conclusion of the Proceeding or any judicial review thereof, the Recipient shall either return to the Disclosing Party all of the Restricted Information and all materials and all documents, records and copies thereof containing Restricted

Information or shall destroy such material and copies including, without limitation, electronic deletion of the Restricted Information from any and all computers and other electronic storage apparatus. For purposes of this section, the term "documents" includes all information fixed in any tangible medium of expression, in whatever form or format. In the event that the Recipient destroys the Restricted Information and copies, the Recipient shall provide the Disclosing Party with a statutory declaration of the Recipient or a senior officer of the Recipient confirming that all Restricted Information and copies thereof have been destroyed.

3. Ownership of Restricted Information: The Restricted Information remains the property of the Disclosing Party or its agents and no licence or other rights to the Restricted Information is granted or implied hereby.

4. Equitable Relief: The Recipient hereby acknowledges that unauthorized disclosure or use of the Restricted Information could cause irreparable harm and significant injury to the Disclosing Party or its agents that may be difficult to ascertain. Accordingly, the Recipient agrees that the Disclosing Party will have the right to seek and obtain immediate injunctive relief to enforce obligations under this Agreement in addition to any other rights and remedies it may have.

5. Covenants: The Recipient further covenants and agrees with the Disclosing Party that in connection with the Proceeding the Recipient shall not request or require the Disclosing Party to perform any modelling or “runs” using the Restricted Information that the Recipient is capable of performing using the Restricted Information.

6. Non-Assignable: This Agreement shall not be assignable by either party.

7. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the Province of New Brunswick and the laws of Canada applicable therein.

IN WITNESS WHEREOF the Recipient has executed this Agreement this day of _____, 20** and hereby agrees to be bound to the Disclosing Party in accordance with the terms set out herein.

[Name of Recipient]

per: _____
(signature of officer or individual)

Name:
Title:
E-mail:

[Name of Disclosing Party]

per: _____
(signature of officer or individual)

Name:

Title:

E-mail: