



# Ontario Energy Board

## Rules of Practice and Procedure

### Document Updates

<b>Date</b>	<b>Description of Changes</b>
July 30, 2021	Revisions related to Rules 40-43 dealing with motions to review, and administrative changes relating to definitions and general principles of interpretation.
February 10, 2021	Updated for the OEB's new governance under the <i>OEB Act</i> , for changes due to the digitization of records and other, predominantly administrative/housekeeping, changes
October 28, 2016	Revisions consequential to revisions of the Practice Direction on Settlement Conferences
April 24, 2014	Revisions resulting from the Consultation to Review the Framework Governing the Participation of Intervenor in Board Proceedings
January 17, 2013	Revisions related to applications under section 36.2 of the <i>Electricity Act, 1998</i> to review reliability standards
January 9, 2012	Addition of a new Rule relating to expert evidence
October 13, 2011	Revisions related to the filing of personal information
July 14, 2008	Added new rule for appeals by the IESO with respect to electricity reliability standards. Made a number of other, predominantly administrative/housekeeping, changes related to amendments made to the <i>OEB Act</i>
November 16, 2006	Revisions related to confidential filings

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**PART I - GENERAL**

**1. Application and Availability of Rules**

- 1.01 These Rules apply to proceedings before the Ontario Energy Board (OEB) except enforcement proceedings. These Rules, other than the Rules set out in Part VII, also apply, with such modifications as the context may require, to all proceedings to be determined by an employee acting under delegated authority.
- 1.02 These Rules, in English and in French, are available for examination on the OEB's website, or upon request from the Registrar.
- 1.03 The OEB may dispense with, amend, vary or supplement, with or without a hearing, all or part of any Rule at any time, if it is satisfied that the circumstances of the proceeding so require, or it is in the public interest to do so.

**2. Interpretation of Rules**

- 2.01 These Rules shall be liberally construed in the public interest to secure the most just, expeditious, and efficient determination on the merits of every proceeding before the OEB.
- 2.02 Where procedures are not provided for in these Rules, the OEB may do whatever is necessary and permitted by law to enable it to effectively and completely adjudicate on the matter before it.
- 2.03 These Rules shall be interpreted in a manner that facilitates the introduction and use of electronic regulatory filing and, for greater certainty, the introduction and use of digital communication and storage media.
- 2.04 Unless the OEB otherwise directs, any amendment to these Rules comes into force upon publication on the OEB's website.
- 2.05 In these Rules, and in the *Practice Directions* except as otherwise provided in a *Practice Direction*:
  - (a) words importing the singular include the plural and vice versa;
  - (b) public body corporate; and (iii) any government, government agency or body, regulatory agency or body or other body politic or collegiate;
  - (c) where a word or phrase is defined, other parts of speech and grammatical forms of the word or phrase have a corresponding meaning;
  - (d) a reference to a document (including a statutory instrument) or a provision of a document includes any amendment or supplement to, or any

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- replacement of, that document or that provision; and
- (e) the expression “including” means including without limitation, and the expression “include”, “includes” and “included” shall be interpreted accordingly.

### **3. Definitions**

3.01 In these Rules,

**"affidavit"** means written evidence under oath or affirmation;

**"appeal"** has the meaning given to it in **Rule 17.01**;

**"appellant"** means a person who brings an appeal;

**"applicant"** means a person who makes an application;

**"application"** when used in connection with a proceeding commenced by an application to the OEB, or transferred from an employee acting under delegated authority to the OEB by the Chief Commissioner under section 6(7) of the *OEB Act*, means the commencement by a party of a proceeding other than an appeal;

**"Chief Commissioner"** means the commissioner appointed as chief commissioner under section 4.3 of the *OEB Act*;

**"Commissioner"** means a commissioner appointed under section 4.3 of the *OEB Act*;

**"document"** includes written documentation, films, photographs, charts, maps, graphs, plans, surveys, books of account, transcripts, videotapes, audio tapes, and information stored by means of an electronic storage and retrieval system;

**"Electricity Act"** means the *Electricity Act, 1998*, S.O. 1998, c.15, Schedule A, as amended from time to time;

**"electronic hearing"** means a hearing held by conference telephone or some other form of electronic technology allowing persons to communicate with one another;

**"employee acting under delegated authority"** means an employee to whom a power or duty of the OEB has been delegated under section 6 of the *OEB Act*;

**"file"** means to file with the Registrar in compliance with these Rules and any directions of the OEB;

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**"hearing"** means a hearing in any proceeding before the OEB, and includes an electronic hearing, an oral hearing, and a written hearing;

**"hours of operation"** means the OEB offices' standard hours of operation as set out on the [OEB's website](#);

**"interrogatory"** means a request in writing for information or particulars made to a party in a proceeding;

**"intervenor"** means a person who has been granted intervenor status by the OEB;

**"market rules"** means the rules made under section 32 of the *Electricity Act*;

**"Minister"** means the Minister as defined in the *OEB Act*;

**"motion"** means a request for an order or decision of the OEB made in a proceeding;

**"OEB"** means the Ontario Energy Board;

**"OEB Act"** means the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B, as amended from time to time;

**"OEB staff"** means employee(s) of the OEB;

**"OEB's website"** means the website maintained by the OEB at [www.oeb.ca](http://www.oeb.ca);

**"oral hearing"** means a hearing at which the parties or their representatives attend before the OEB in person;

**"party"** includes an applicant, an appellant, an employee acting under delegated authority in an appeal under section 7 of the *OEB Act*, and any person granted intervenor status by the OEB;

**"Practice Directions"** means practice directions issued by the OEB from time to time;

**"proceeding"** means a process to decide a matter brought before the OEB, including a matter commenced by application, notice of appeal, transfer by the Chief Commissioner under section 6(7) of the *OEB Act*, reference, request or directive of the Minister, or on the OEB's own motion;

**"reference"** means any reference made to the OEB by the Minister;

**"Registrar"** means the Registrar of the OEB appointed under section 5 of the

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*OEB Act*;

**"reliability standard"** has the meaning given to it in the *Electricity Act*;

**"serve"** means to effectively deliver, in compliance with these Rules or as the OEB may direct;

**"statement"** means any unsworn information provided to the OEB;

**"writing"** includes electronic media, formed and secured as directed by the OEB;

**"written"** includes electronic media, formed and secured as directed by the OEB; and

**"written hearing"** means a hearing held by means of the exchange of documents.

#### **4. Procedural Orders and Practice Directions**

- 4.01 The OEB may at any time in a proceeding make orders with respect to the procedure and practices that apply in the proceeding. Every party shall comply with all applicable procedural orders.
- 4.02 The OEB may set time limits for doing anything provided in these Rules.
- 4.03 The OEB may at any time amend any procedural order.
- 4.04 Where a provision of these Rules is inconsistent with a provision of a procedural order, the procedural order shall prevail to the extent of the inconsistency.
- 4.05 The OEB may from time to time issue *Practice Directions* in relation to the preparation, filing and service of documents or in relation to participation in a proceeding. Every party shall comply with all applicable *Practice Directions*, whether or not specifically referred to in these Rules.

#### **5. Failure to Comply**

- 5.01 Where a party to a proceeding has not complied with a requirement of these Rules or a procedural order, the OEB may:
  - (a) grant all necessary relief, including amending the procedural order, on such conditions as the OEB considers appropriate;
  - (b) adjourn the proceeding until it is satisfied that there is compliance; or

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(c) order the party to pay costs.

5.02 Where a party fails to comply with a time period for filing evidence or other material, the OEB may, in addition to its powers set out in **Rule 5.01**, disregard the evidence or other material that was filed late.

5.03 No proceeding is invalid by reason alone of an irregularity in form.

## **6. Computation of Time**

6.01 In the computation of time under these Rules or an order:

- (a) where there is reference to a number of days between two events, the days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens;
- (b) where the time for filing a document with the OEB expires on a holiday, as defined under **Rule 6.02**, the document may be filed on the next day that is not a holiday; and
- (c) where a document is filed after the OEB's hours of operation, it shall be deemed to have been filed on the next day that is not a holiday.

6.02 A holiday means a Saturday, Sunday, and any other day that the OEB's offices are closed.

## **7. Extending or Abridging Time**

7.01 The OEB may on its own motion or upon a motion by a party extend or abridge a time limit directed by these Rules, *Practice Directions* or by the OEB, on such conditions the OEB considers appropriate.

7.02 The OEB may exercise its discretion under this Rule before or after the expiration of a time limit, with or without a hearing.

7.03 Where a party cannot meet a time limit directed by the Rules, *Practice Directions* or the OEB, the party shall notify the Registrar as soon as possible before the time limit has expired.

## **8. Motions**

8.01 Unless the OEB directs otherwise, any party requiring a decision or order of the OEB on any matter arising during a proceeding shall do so by serving and filing a notice of motion.



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- 8.02 The notice of motion and any supporting documents shall be filed and served within such a time period as the OEB shall direct.
- 8.03 Unless the OEB directs otherwise, a party who wishes to respond to the notice of motion shall file and serve, at least two calendar days prior to the motion's hearing date, a written response, an indication of any oral evidence the party seeks to present, and any evidence the party relies on, in appropriate affidavit form.
- 8.04 The OEB, in hearing a motion, may permit oral or other evidence in addition to the supporting documents accompanying the notice, response or reply.

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**PART II - DOCUMENTS, FILING, SERVICE**

**9. Filing and Service of Documents**

- 9.01 All documents filed with the OEB shall be directed to the Registrar. Documents, including applications and notices of appeal, shall be filed in such manner as may be specified by the OEB.
- 9.02 All documents filed in a proceeding, with the exception of documents found by the OEB to be confidential, may be accessed through the OEB's website. Any person wishing to access documents from the public record of any proceeding who is unable to access those documents on the OEB's website may contact the Registrar to make arrangements to examine the documents.

**9A Filing of Documents that Contain Personal Information**

- 9A.01 Any person filing a document that contains personal information, as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*, of another person who is not a party to the proceeding shall file two versions of the document as follows:
- (a) one version of the document must be a non-confidential, redacted version of the document from which the personal information has been deleted or stricken; and
  - (b) the second version of the document must be a confidential, un-redacted version of the document that includes the personal information and should be marked "Confidential-Personal Information".
- 9A.02 The non-confidential, redacted version of the document from which the personal information has been deleted or stricken will be placed on the public record. The confidential, un-redacted version of the document will be held in confidence and will not be placed on the public record. Neither the confidential, un-redacted version of the document nor the personal information contained in it will be provided to any other party, including a person from whom the OEB has accepted a Declaration and Undertaking under the *Practice Directions*, unless the OEB determines that either (a) the redacted information is not personal information, as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*, or (b) the disclosure of the personal information would be in accordance with the *Freedom of Information and Protection of Privacy Act*.

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**10. Confidential Filings**

- 10.01 A party may request that all or any part of a document, including a response to an interrogatory, be held in confidence by the OEB.
- 10.02 Any request for confidentiality made under **Rule 10.01** shall be made in accordance with the *Practice Directions*.
- 10.03 A party may object to a request for confidentiality by filing and serving an objection in accordance with the *Practice Directions* and within the time specified by the OEB.
- 10.04 After giving the party claiming confidentiality an opportunity to reply to any objection made under **Rule 10.03**, the OEB may:
- (a) order the document be placed on the public record, in whole or in part;
  - (b) order the document be kept confidential, in whole or in part;
  - (c) order that the non-confidential redacted version of the document or the non-confidential description or summary of the document prepared by the party claiming confidentiality be revised;
  - (d) order that the confidential version of the document be disclosed under suitable arrangements as to confidentiality; or
  - (e) make any other order the OEB finds to be in the public interest.
- 10.05 Where the OEB makes an order under **Rule 10.04** to place on the public record any part of a document that was filed in confidence, the party who filed the document may, subject to **Rule 10.06** and in accordance with and within the time specified in the *Practice Directions*, request that it be withdrawn prior to its placement on the public record.
- 10.06 The ability to request the withdrawal of information under **Rule 10.05** does not apply to information that was required to be produced by an order of the OEB.
- 10.07 Where a party wishes to have access to a document that, in accordance with the *Practice Directions*, will be held in confidence by the OEB without the need for a request under **Rule 10.01**, the party shall make a request for access in accordance with the *Practice Directions*.
- 10.08 Requests for access to confidential information made at times other than during the proceeding in which the confidential information was filed shall be made in accordance with the *Practice Directions*.

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10.09 The party who filed the information to which a request for access under **Rule 10.07** or **Rule 10.08** relates may object to the request for access by filing and serving an objection within the time specified by the OEB.

10.10 The OEB may, further to a request for access under **Rule 10.07** or **Rule 10.08**, make any order referred to in **Rule 10.04**.

## **11. Amendments to the Evidentiary Record and New Information**

11.01 The OEB may, on conditions the OEB considers appropriate:

- (a) permit an amendment to the evidentiary record; or
- (b) give directions or require the preparation of evidence, where the OEB determines that the evidence in an application is insufficient to allow the issues in the application to be decided.

11.02 Where a party becomes aware of new information that constitutes a material change to evidence already before the OEB before the decision or order is issued, the party shall serve and file appropriate amendments to the evidentiary record, or serve and file the new information.

11.03 Where all or any part of a document that forms part of the evidentiary record is revised, the party filing the revision shall:

- (a) ensure that each revised document clearly indicates the date of revision and the part revised; and
- (b) file with the revised document(s) a table describing the original evidence, each revision to the evidence, the date each revision was made, and if the change was numerical, the difference between the original evidence and the revision(s). This table is to be updated to contain all significant revisions to the evidence as they are filed.

11.04 A party shall comply with any direction from the OEB to provide such further information, particulars or documents as the OEB considers necessary to enable the OEB to obtain a full and satisfactory understanding of an issue in the proceeding.

## **12. Affidavits**

12.01 An affidavit shall be confined to the statement of facts within the personal knowledge of the person making the affidavit unless the facts are clearly stated to be based on the information and belief of the person making the affidavit.

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- 12.02 Where a statement is made on information and belief, the source of the information and the grounds on which the belief is based shall be set out in the affidavit.
- 12.03 An exhibit that is referred to in an affidavit shall be marked as such by the person taking the affidavit, and the exhibit shall be attached to and filed with the affidavit.
- 12.04 The OEB may require the whole or any part of a document filed to be verified by affidavit.

### **13. Written Evidence**

- 13.01 Other than oral evidence given at the hearing, where a party intends to submit evidence, or is required to do so by the OEB, the evidence shall be in writing and in a form approved by the OEB.
- 13.02 The written evidence shall include a statement of the qualifications of the person who prepared the evidence or under whose direction or control the evidence was prepared.
- 13.03 Where a party is unable to submit written evidence as directed by the OEB, the party shall:
- (a) file such written evidence as is available at that time;
  - (b) identify the balance of the evidence to be filed; and
  - (c) state when the balance of the evidence will be filed.

### **13A. Expert Evidence**

- 13A.01 A party may engage, and two or more parties may jointly engage, one or more experts to give evidence in a proceeding on issues that are relevant to the expert's area of expertise.
- 13A.02 An expert shall assist the OEB impartially by giving evidence that is fair and objective.
- 13A.03 An expert's evidence shall, at a minimum, include the following:
- (a) the expert's name, business name and address, and general area of expertise;
  - (b) the expert's qualifications, including the expert's relevant educational

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and professional experience in respect of each issue in the proceeding to which the expert's evidence relates;

- (c) the instructions provided to the expert in relation to the proceeding and, where applicable, to each issue in the proceeding to which the expert's evidence relates;
- (d) the specific information upon which the expert's evidence is based, including a description of any factual assumptions made and research conducted, and a list of the documents relied on by the expert in preparing the evidence;
- (e) 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
- (f) an acknowledgement of the expert's duty to the OEB in **Form A** to these Rules, signed by the expert.

13A.04 In a proceeding where two or more parties have engaged experts, the OEB may require two or more of the experts to:

- (a) in advance of the hearing, confer with each other for the purposes of, among others, narrowing issues, identifying the points on which their views differ and are in agreement, and preparing a joint written statement to be admissible as evidence at the hearing; and
- (b) at the hearing, appear together as a concurrent expert panel for the purposes of, among others, answering questions from the OEB and others as permitted by the OEB, and providing comments on the views of another expert on the same panel.

13A.05 The activities referred to in **Rule 13A.04** shall be conducted in accordance with such directions as may be given by the OEB, including as to:

- (a) scope and timing;
- (b) the involvement of any expert engaged by the OEB;
- (c) the costs associated with the conduct of the activities;
- (d) the attendance or non-attendance of counsel for the parties, or of other persons, in respect of the activities referred to in paragraph (a) of **Rule 13A.04**; and
- (e) any issues in relation to confidentiality.

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13A.06 A party that engages an expert shall ensure that the expert is made aware of, and has agreed to accept, the responsibilities that are or may be imposed on the expert as set out in this **Rule 13A** and **Form A**.

## **14. Disclosure**

14.01 A party who intends to rely on or refer to any document that has not already been filed in a proceeding shall file and serve the document 24 hours before using it in the proceeding, unless the OEB directs otherwise.

14.02 Any party who fails to comply with **Rule 14.01** shall not put the document in evidence or use it in the cross-examination of a witness, unless the OEB otherwise directs.

14.03 Where the good character, propriety of conduct or competence of a party is an issue in the proceeding, the party is entitled to be furnished with reasonable information of any allegations at least 15 calendar days prior to the hearing.

## **PART III - PROCEEDINGS**

## **15. Commencement of Proceedings**

15.01 Unless commenced by the OEB, a proceeding shall be commenced by filing an application or a notice of appeal in compliance with these Rules, and within such a time period as may be prescribed by statute or the OEB.

15.02 A person appealing an order made under the market rules shall file a notice of appeal within 15 calendar days after being served with a copy of the order, or within 15 calendar days of having completed making use of any provisions relating to dispute resolution set out in the market rules, whichever is later.

15.03 An appeal of an order, finding or remedial action made or taken by a standards authority referred to in section 36.3 of the *Electricity Act* shall be commenced by the Independent Electricity System Operator by notice of appeal filed within 15 calendar days after being served with a copy of the order or finding or of notice of the remedial action, or within 15 calendar days of receipt of notice of the final determination of any other reviews and appeals referred to in section 36.3(2) of the *Electricity Act*, whichever is later.

## **16. Applications**

16.01 An application shall contain:

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- (a) a clear and concise statement of the facts;
- (b) the grounds for the application;
- (c) the statutory provision under which it is made; and
- (d) the nature of the order or decision applied for.

16.02 An application shall be in such form as may be approved or specified by the OEB and shall be accompanied by such fee as may be set for that purpose under section 12.1(2) of the *OEB Act*.

## **17. Appeals**

17.01 An “appeal” means:

- (a) an appeal under section 7 of the *OEB Act*;
- (b) a review under section 59(6) of the *OEB Act*;
- (c) a review of an amendment to the market rules under section 33 or section 34 of the *Electricity Act*;
- (d) a review of a provision of the market rules under section 35 of the *Electricity Act*;
- (e) an appeal under section 36, 36.1 or 36.3 of the *Electricity Act*;
- (f) a review of a reliability standard under section 36.2 of the *Electricity Act*; and
- (g) an appeal under section 7(4) of the *Toronto District Heating Corporation Act, 1998*.

17.02 A notice of appeal shall contain:

- (a) the portion of the order, decision, market rules, reliability standard or finding or remedial action referred to in **Rule 15.03** being appealed;
- (b) the statutory provision under which the appeal is made;
- (c) the nature of the relief sought, and the grounds on which the appellant shall rely;
- (d) if an appeal of an order made under the market rules under section 36 of the *Electricity Act*, a statement confirming that the appellant has made use of any dispute resolution provisions of the market rules;
- (e) if an application by a market participant for review of a provision of the market rules under section 35 of the *Electricity Act*, a statement confirming that the market participant has made use of any review provisions of the market rules; and



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- (f) if an appeal of an order, finding or remedial action under section 36.3 of the *Electricity Act*, a statement confirming that the Independent Electricity System Operator has commenced all other reviews and appeals available to it and such reviews and appeals have been finally determined.
- 17.03 A notice of appeal shall be in such form as may be approved or specified by the OEB and shall be accompanied by such fee as may be set for that purpose under section 12.1(2) of the *OEB Act*.
- 17.04 At a hearing of an appeal, an appellant shall not seek to appeal a portion of the order, decision, market rules, reliability standard or finding or remedial action referred to in **Rule 15.03** or rely on any ground, that is not stated in the appellant's notice of appeal, except with leave of the OEB.
- 17.05 In addition to those persons on whom service is required by statute, the OEB may direct an appellant to serve the notice of appeal on such persons as it considers appropriate.
- 17.06 The OEB may require an appellant to file an affidavit of service indicating how and on whom service of the notice of appeal was made.
- 17.07 Subject to **Rule 17.08**, a request by a party to stay part or all of the order, Decision, market rules, reliability standard or finding or remedial action referred to in **Rule 15.03** being appealed pending the determination of the appeal shall be made by motion to the OEB.
- 17.08 For greater certainty, a request to stay shall not be made where a stay is precluded by statute.
- 17.09 In respect of a motion brought under **Rule 17.07**, the OEB may order that implementation or operation of the order, decision, market rules or reliability standard be delayed or stayed, on conditions as it considers appropriate.

## **18. Dismissal Without a Hearing**

- 18.01 The OEB may propose to dismiss a proceeding without a hearing on the grounds that:
- (a) the proceeding is frivolous, vexatious or is commenced in bad faith;
  - (b) the proceeding relates to matters that are outside the jurisdiction of the tribunal; or
  - (c) some aspect of the statutory requirements for bringing the proceeding has not been met.

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- 18.02 Where the OEB proposes to dismiss a proceeding under **Rule 18.01**, it shall give notice of the proposed dismissal in accordance with the *Statutory Powers Procedure Act*.
- 18.03 A party wishing to make written submissions on the proposed dismissal shall do so within 10 calendar days of receiving the OEB's notice under **Rule 18.02**.
- 18.04 Where a party who commenced a proceeding has not taken any steps with respect to the proceeding for more than one year from the date of filing, the OEB may notify the party that the proceeding shall be dismissed unless the person, within 10 calendar days of receiving the OEB's notice, shows cause why it should not be dismissed or advises the OEB that the application or appeal is withdrawn.
- 18.05 Where the OEB dismisses a proceeding, or is advised that the application or appeal is withdrawn, any fee paid to commence the proceeding shall not be refunded.

**19. Decision Not to Process**

- 19.01 The OEB or OEB staff may decide not to process documents relating to the commencement of a proceeding if:
- (a) the documents are incomplete;
  - (b) the documents were filed without the required fee for commencing the proceeding;
  - (c) the documents were filed after the prescribed time period for commencing the proceeding has elapsed; or
  - (d) there is some other technical defect in the commencement of the proceeding.
- 19.02 The OEB or OEB staff shall give the party who commenced the proceeding notice of a decision made under **Rule 19.01** that shall include:
- (a) reasons for the decision; and
  - (b) requirements for resuming processing of the documents, if applicable.
- 19.03 Where requirements for resuming processing of the documents apply, processing shall be resumed where the party complies with the requirements set out in the notice given under **Rule 19.02** within:

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- (a) subject to **Rule 19.03(b)**, 30 calendar days from the date of the notice; or
- (b) 10 calendar days from the date of the notice, where the proceeding commenced is an appeal.

19.04 After the expiry of the applicable time period under **Rule 19.03**, the OEB may close its file for the proceeding without refunding any fee that may already have been paid.

19.05 Where the OEB has closed its file for a proceeding under **Rule 19.04**, a person wishing to refile the related documents shall:

- (a) in the case of an application, refile the documents as a fresh application, and pay any fee required to do so; or
- (b) in the case of an appeal, refile the documents as a fresh notice of appeal, except where the time period for filing the appeal has elapsed, in which case the documents cannot be refiled.

## **20. Withdrawal**

20.01 An applicant or appellant may withdraw an application or appeal:

- (a) at any time prior to the hearing, by filing and serving a notice of withdrawal signed by the applicant or the appellant, or his or her representative; or
- (b) at the hearing with the permission of the OEB.

20.02 A party may by motion seek leave to discontinue participation in a proceeding at any time before a final decision.

20.03 The OEB may impose conditions on any withdrawal or discontinuance, including costs, as it considers appropriate.

20.04 Any fee paid to commence the proceeding by an applicant seeking to withdraw under **Rule 20.01** shall not be refunded.

20.05 If the OEB has reason to believe that a withdrawal or discontinuance may adversely affect the interests of any party or may be contrary to the public interest, the OEB may hold or continue the hearing, or may issue a decision or order based upon proceedings to date.

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## **21. Notice**

- 21.01 Any notices required by these Rules or an OEB order shall be given in writing, unless the OEB directs otherwise.
- 21.02 The OEB may direct a party to give notice of a proceeding or hearing to any person or class of persons, and the OEB may direct the method of providing the notice.
- 21.03 Where a party has been directed to serve a notice under this Rule, the party shall file an affidavit or statement of service that indicates how, when, and to whom service was made.

## **22. Intervenor Status**

- 22.01 Subject to **Rule 22.05** and except as otherwise provided in a notice or procedural order issued by the OEB, a person who wishes to actively participate in the proceeding shall apply for intervenor status by filing and serving a letter of intervention by the date provided in the notice of the proceeding.
- 22.02 The person applying for intervenor status must satisfy the OEB that he or she has a substantial interest and intends to participate actively and responsibly in the proceeding by submitting evidence, argument or interrogatories, or by cross-examining a witness.
- 22.03 Every letter of intervention shall contain the following information:
- (a) a description of the intervenor, its membership, if any, the interest of the intervenor in the proceeding and the grounds for the intervention;
  - (b) in the case of a frequent intervenor, an attached document describing the intervenor, its mandate and objectives, membership, if any, the constituency represented, the types of programs or activities carried out, and the identity of their authorized representative in OEB proceedings, unless such a document was otherwise filed within the previous 12 month period;
  - (c) subject to **Rule 22.04**, a concise statement of the nature and scope of the intervenor's intended participation;
  - (d) a request for the written evidence, if it is desired;
  - (e) an indication as to whether the intervenor intends to seek an award of costs;
  - (f) if applicable, the intervenor's intention to participate in the hearing using the French language; and

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- (g) the full name, address, telephone number, and email address, of no more than two representatives of the intervenor, including counsel, for the purposes of service and delivery of documents in the proceeding.

22.04 Where, by reason of an inability or insufficient time to study the document initiating the proceeding, a person is unable to include any of the information required in the letter of intervention under **Rule 22.03(b)**, the person shall:

- (a) state this fact in the letter of intervention initially filed; and
- (b) refile and serve the letter of intervention with the information required under **Rule 22.03(b)** within 15 calendar days of receipt of a copy of any written evidence, or within 15 calendar days of the filing of the letter of intervention, or within 3 calendar days after a proposed issues list has been filed under **Rule 28**, whichever is later.

22.05 A person may apply for intervenor status after the time limit directed by the OEB by filing and serving a notice of motion and a letter of intervention that, in addition to the information required under **Rule 22.03**, shall include reasons for the late application.

22.06 The OEB may dispose of a motion under **Rule 22.05** with or without a hearing.

22.07 A party may object to a person applying for intervenor status by filing and serving written submissions within 5 business days of being served with a letter of intervention.

22.08 The person applying for intervenor status may make written submissions in response to any submissions filed under **Rule 22.07**.

22.09 The OEB may grant intervenor status on conditions it considers appropriate.

## **23. Public Comment**

23.01 Except as otherwise provided in a notice or procedural order issued by the OEB, a person who does not wish to be a party in a proceeding, but who wishes to communicate views to the OEB, shall file a letter of comment.

23.02 The letter of comment shall include the nature of the person's interest, the person's full name, mailing address, email address and telephone number.

23.03 Before the record of a proceeding is closed, the applicant in the proceeding must address the issues raised in letters of comment by way of a document filed in the proceeding.

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23.04 In any proceeding, the OEB may make arrangements to receive oral comment on the record of the proceeding.

23.05 A person who makes an oral comment shall not do so under oath or affirmation and shall not be subject to cross-examination, unless the OEB directs otherwise.

## **24. Adjournments**

24.01 The OEB may adjourn a hearing on its own initiative, or upon motion by a party, and on conditions the OEB considers appropriate.

24.02 Parties shall file and serve a motion to adjourn at least 10 calendar days in advance of the scheduled date of the hearing.

## **PART IV - PRE-HEARING PROCEDURES**

### **25. Technical Conferences**

25.01 The OEB may direct the parties to participate in technical conferences for the purposes of reviewing and clarifying an application, an intervention, a reply, the evidence of a party, or matters connected with interrogatories.

25.02 The technical conferences may be transcribed, and the transcription, if any, shall be filed and form part of the record of the proceedings.

### **26. Interrogatories**

26.01 In any proceeding, the OEB may establish an interrogatory procedure 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; or
- (d) expedite the proceeding.

26.02 Interrogatories shall:

- (a) be directed to the party from whom the response is sought;
- (b) contain a specific reference to the evidence;
- (c) be grouped together according to the issues to which they relate;
- (d) contain specific requests for clarification of a party's evidence, documents

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or other information in the possession of the party and relevant to the proceeding;

- (e) be numbered using a continuous numbering system such that:
  - i. the format is [issue number] [acronym of party] [interrogatory number for that party]
  - ii. the “issue number” corresponds to the issues list, or if there is no issues list in the proceeding, to the exhibit or chapter number or letter in the application;
  - iii. the “acronym of party” corresponds to the OEB-issued list of acronyms;
  - iv. the “interrogatory number for that party” is sequential for that party despite a change in issue number (e.g. 2 Staff 4 represents OEB staff’s fourth interrogatory on issue 2); and
  - v. if a supplementary round of interrogatories is ordered, the “interrogatory number for that party” remains sequential for that party and the suffix “s” is added to the interrogatory number;
- (f) be filed and served as directed by the OEB; and
- (g) set out the date on which they are filed and served.

## **27. Responses to Interrogatories**

27.01 Subject to **Rule 27.02**, where interrogatories have been directed and served on a party, that party shall:

- (a) provide a full and adequate response to each interrogatory;
- (b) group the responses together according to the issue to which they relate;
- (c) repeat each question at the beginning of each response;
- (d) respond to each interrogatory on a separate page or pages;
- (e) number the responses as described in **Rule 28.02(e)**;
- (f) specify the intended witness, witnesses or witness panel who prepared the response, if applicable;
- (g) file and serve the response as directed by the OEB; and
- (h) set out the date on which the response is filed and served.

27.02 A party who is unable or unwilling to provide a full and adequate response to an interrogatory shall file and serve a response:

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- (a) where the party contends that the interrogatory seeks information that is not relevant, setting out specific reasons in support of that contention;
- (b) where the party contends that the information necessary to provide an answer is not available or cannot be provided with reasonable effort, setting out the reasons for the unavailability of such information, as well as any alternative available information in support of the response; or
- (c) otherwise explaining why such a response cannot be given.

A party may request that all or any part of a response to an interrogatory be held in confidence by the OEB in accordance with **Rule 10**.

27.03 Where a party is not satisfied with the response provided, the party may bring a motion seeking direction from the OEB.

27.04 Where a party fails to respond to an interrogatory made by OEB staff, the matter may be referred to the OEB.

## **28. Identification of Issues**

28.01 The OEB may identify issues that it will consider in a proceeding if, in the opinion of the OEB:

- (a) the identification of issues would assist the OEB in the conduct of the proceeding;
- (b) the documents filed do not sufficiently set out the matters in issue at the hearing; or
- (c) the identification of issues would assist the parties to participate more effectively in the hearing.

28.02 The OEB may direct the parties to participate in issues conferences for the purposes of identifying issues, and formulating a proposed issues list that shall be filed within such a time period as the OEB may direct.

28.03 A proposed issues list shall set out any issues that:

- (a) the parties have agreed should be contained on the list;
- (b) are contested; and
- (c) the parties agree should not be considered by the OEB.

28.04 Where the OEB has issued a procedural order for a list of issues to be determined in the proceeding, a party seeking to amend the list of issues shall do so by way of motion.



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**29. Settlement Conferences**

- 29.01 The OEB may direct that participation in settlement conferences be mandatory.
- 29.02 A settlement conference shall be open only to parties and their representatives, unless the OEB directs or the parties agree otherwise.
- 29.03 A Commissioner shall not participate in a settlement conference, and the conference shall not be transcribed or form part of the record of a proceeding.
- 29.04 The OEB may appoint a person to act as a facilitator at a settlement conference.
- 29.05 The chair of a settlement conference may enquire into the issues and shall attempt to effect a comprehensive settlement of all issues or a settlement of as many of the issues as possible.
- 29.06 The chair of a settlement conference may attempt to effect a settlement of issues by any reasonable means including:
- (a) clarifying and assessing a party's position or interests;
  - (b) clarifying differences in the positions or interests taken by the respective parties;
  - (c) encouraging a party to evaluate its own position or interests in relation to other parties by introducing objective standards; and
  - (d) identifying settlement options or approaches that have not yet been considered.
- 29.07 Subject to **Rule 29.08**, where a representative attends a settlement conference without the party, the representative shall be authorized to settle issues.
- 29.08 Any limitations on a representative's authority shall be disclosed at the outset of the settlement conference.
- 29.09 All persons attending a settlement conference shall treat admissions, concessions, offers to settle and related discussions as confidential and shall not disclose them outside the conference, except in accordance with the Practice Direction on Settlement Conferences.
- 29.10 Admissions, concessions, offers to settle and related discussions shall not be admissible in any proceeding except in accordance with the Practice Direction on Settlement Conferences.

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### **30. Settlement Proposal**

- 30.01 Where some or all of the parties reach an agreement, the parties shall make and file a settlement proposal describing the agreement in order to allow the OEB to review and consider the settlement.
- 30.02 The settlement proposal shall identify for each issue those parties who agree with the settlement of the issue and any parties who disagree.
- 30.03 The parties shall ensure that the settlement proposal contains or identifies evidence and rationale sufficient to support the settlement proposal and shall provide such additional evidence and rationale as the OEB may require.
- 30.04 A party who does not agree with the settlement of an issue will be entitled to offer evidence in opposition to the settlement proposal and to cross-examine on the issue at the hearing.
- 30.05 Where evidence is introduced at the hearing that may affect the settlement proposal, any party may, with leave of the OEB, withdraw from the proposal upon giving notice and reasons to the other parties, and **Rule 30.04** applies.
- 30.06 Where the OEB accepts a settlement proposal as a basis for making a decision in the proceeding, the OEB may base its findings on the settlement proposal, and on any additional evidence that the OEB may have required.

### **31. Pre-Hearing Conference**

- 31.01 In addition to technical, issues and settlement conferences, the OEB may, on its own motion or at the request of any party, direct the parties to make submissions in writing or to participate in pre-hearing conferences for the purposes of:
- (a) admitting certain facts or proof of them by affidavit;
  - (b) permitting the use of documents by any party;
  - (c) recommending the procedures to be adopted;
  - (d) setting the date and place for the commencement of the hearing;
  - (e) considering the dates by which any steps in the proceeding are to be taken or begun;
  - (f) considering the estimated duration of the hearing; or
  - (g) deciding any other matter that may aid in the simplification or the just and most expeditious disposition of the proceeding.
- 31.02 The Chief Commissioner may designate a Commissioner or any other person to preside at a pre-hearing conference.

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- 31.03 A Commissioner who presides at a pre-hearing conference may make such orders as he or she considers advisable with respect to the conduct of the proceeding, including adding parties.

## **PART V - HEARINGS**

### **32. Hearing Format and Notice**

- 32.01 In any proceeding, the OEB may hold an oral, electronic or written hearing, subject to the *Statutory Powers Procedure Act* and the statute under which the proceeding arises.
- 32.02 The format, date and location of a hearing shall be determined by the OEB.
- 32.03 Subject to **Rule 21.02**, the OEB shall provide written notice of a hearing to the parties, and to such other persons or class of persons as the OEB considers necessary.

### **33. Hearing Procedure**

- 33.01 Parties to a hearing shall comply with any directions issued by the OEB in the course of the proceeding.

### **34. Summons**

- 34.01 A party who requires the attendance of a witness or production of a document or thing at an oral or electronic hearing may obtain a Summons from the Registrar.
- 34.02 Unless the OEB directs otherwise, the Summons shall be served personally and at least 48 hours before the time fixed for the attendance of the witness or production of the document or thing.
- 34.03 The issuance of a Summons by the Registrar, or the refusal of the Registrar to issue a Summons, may be brought before the OEB for review by way of a motion.

### **35. Hearings in the Absence of the Public**

- 35.01 Subject to the *Statutory Powers Procedure Act* and the statute under which the proceeding arises, the OEB may hold an oral or electronic hearing or part of the hearing in the absence of the public, with such persons in attendance as the OEB may permit and on such conditions as the OEB may impose.

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**36. Constitutional Questions**

- 36.01 Where a party intends to raise a question about the constitutional validity or applicability of legislation, a regulation or by-law made under legislation, or a rule of common law, or where a party claims a remedy under subsection 24(1) of the Canadian Charter of Rights and Freedoms, notice of a constitutional question shall be filed and served on the other parties and the Attorneys General of Canada and Ontario as soon as the circumstances requiring notice become known and, in any event, at least 15 calendar days before the question is argued.
- 36.02 Where the Attorneys General of Canada and Ontario receive notice, they are entitled to adduce evidence and make submissions to the OEB regarding the constitutional question.
- 36.03 The notice filed and served under **Rule 36.01** shall be in substantially the same form as that required under the Rules of Civil Procedure for notice of a constitutional question.

**37. Hearings in French**

- 37.01 Subject to this Rule, evidence or submissions may be presented in either English or French.
- 37.02 The OEB may conduct all or part of a hearing in French when a request is made:
- (a) by a party;
  - (b) by a person seeking intervenor status at the time the application for intervenor status is made; or
  - (c) by a person making an oral comment under **Rule 23** who indicates to the OEB the desire to make the presentation in French.
- 37.03 Where all or part of a hearing is to be conducted in French, the notice of the hearing shall specify in English and French that the hearing is to be so conducted, and shall further specify that English may also be used.
- 37.04 Where a written submission or written evidence is provided in either English or French, the OEB may order any person presenting such written submission or written evidence to provide it in the other language if the OEB considers it necessary for the fair disposition of the matter.

**38. Media Coverage**

- 38.01 Radio and television recording of an oral or electronic hearing which is open to the

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public may be permitted on conditions the OEB considers appropriate, and as directed by the OEB.

- 38.02 The OEB may refuse to permit the recording of all or any part of an oral or electronic hearing if, in the opinion of the OEB, such coverage would inhibit specific witnesses or disrupt the proceeding in any way.

## **PART VI - COSTS**

### **39. Cost Eligibility and Awards**

- 39.01 Any person may apply to the OEB for eligibility to receive cost awards in OEB proceedings in accordance with the *Practice Directions*.

- 39.02 Any person in a proceeding whom the OEB has determined to be eligible for cost awards under **Rule 39.01** may apply for costs in the proceeding in accordance with the *Practice Directions*.

## **PART VII - REVIEW**

### **40. Request**

- 40.01 Subject to **Rule 40.02**, any person may bring a motion requesting the OEB to review all or part of a final order or decision, and to vary, suspend or cancel the order or decision.

- 40.02 A person who was not a party to the proceeding to which the motion relates must first obtain the leave of the OEB by way of a motion before it may bring a motion under **Rule 40.01**.

- 40.03 The notice of motion for a motion under **Rule 40.01** shall include the information required under **Rule 42**, and shall be filed and served on all parties to the proceeding to which the motion relates within 20 calendar days of the date of the order or decision that is the subject of the motion.

- 40.04 Subject to **Rule 40.05**, a motion brought under **Rule 40.01** may also include a request to stay the implementation of the order or decision pending the determination of the motion.

- 40.05 For greater certainty, a request to stay shall not be made where a stay is precluded by statute.

- 40.06 In respect of a request to stay made in accordance with **Rule 40.04**, the OEB

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may order that the implementation of the order or decision be delayed, on conditions as it considers appropriate.

## **41. Powers of the OEB**

41.01 The OEB may at any time initiate a review of one of its decisions or orders, and may confirm, vary, suspend or cancel the order or decision.

41.02 The OEB may at any time, without notice or a hearing of any kind, correct a typographical error, error of calculation or similar error made in one of its orders or decisions.

## **42. Motion to Review**

42.01 Every notice of a motion made under **Rule 40.01**, in addition to the requirements under **Rule 8.02**, shall:

- (a) set out the grounds for the motion, which grounds must be one or more of the following:
  - i. the OEB made a material and clearly identifiable error of fact, law or jurisdiction. For this purpose, (1) disagreement as to the weight that the OEB placed on any particular facts does not amount to an error of fact; and (2) disagreement as to how the OEB exercised its discretion does not amount to an error of law or jurisdiction unless the exercise of discretion involves an extricable error of law;
  - ii. new facts that have arisen since the decision or order was issued that, had they been available at the time of the proceeding to which the motion relates, could if proven reasonably be expected to have resulted in a material change to the decision or order; or
  - iii. facts which existed prior to the issuance of the decision or order but were unknown during the proceeding and could not have been discovered at the time by exercising reasonable diligence, and could if proven reasonably be expected to result in a material change to the decision or order;
- (b) if sought, and subject to **Rule 40**, request a stay of the implementation of the order or decision or any part pending the determination of the motion;
- (c) describe how the moving party's interests are materially harmed by the decision or order;
- (d) where the grounds include new facts and the new facts relate to a change in circumstances, explain whether the change in circumstances was within the control of the moving party;

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- (e) provide a clear explanation of why the motion should pass the threshold described in **Rule 43.01**; and
- (f) set out the specific relief requested.

#### **43. The Threshold Question and Determinations**

43.01 In addition to its powers under **Rule 18.01**, prior to proceeding to hear a motion under **Rule 40.01** on its merits, the OEB may, with or without a hearing, consider a threshold question of whether the motion raises relevant issues material enough to warrant a review of the decision or order on the merits. Considerations may include:

- (a) whether any alleged errors are in fact errors (as opposed to a disagreement regarding the weight the OEB applied to particular facts or how it exercised its discretion);
- (b) whether any new facts, if proven, could reasonably have been placed on the record in the proceeding to which the motion relates;
- (c) whether any new facts relating to a change in circumstances were within the control of the moving party;
- (d) whether any alleged errors, or new facts, if proven, could reasonably be expected to result in a material change to the decision or order;
- (e) whether the moving party's interests are materially harmed by the decision and order sufficient to warrant a full review on the merits; and
- (f) where the grounds of the motion relate to a question of law or jurisdiction that is subject to appeal to the Divisional Court under section 33 of the *OEB Act*, whether the question of law or jurisdiction that is raised as a ground for the motion was raised in the proceeding to which the motion relates and was considered in that proceeding.

43.02 Where the OEB determines that the threshold in **Rule 43.01** has been passed, or where it has chosen not to consider the threshold, or where it is conducting a review on its own motion, it will hear the motion on its merits and decide whether to confirm, cancel, suspend or vary the decision or order.

43.03 The OEB will only cancel, suspend or vary a decision when it is clear that a material change to the decision or order is warranted based on one or more of the grounds set out in **Rule 42.01(a)**.