



NEWFOUNDLAND AND LABRADOR
BOARD OF COMMISSIONERS OF PUBLIC UTILITIES
120 Torbay Road, P.O. Box 21040, St. John's, Newfoundland and Labrador, Canada, A1A 5B2

2014-03-13

Ms. Roberta Frampton Benefiel, Vice President
Grand Riverkeeper® Labrador Inc.
Box 569, Station B
Happy Valley-Goose Bay NL A0P 1E0

Dear Ms. Frampton Benefiel:


Re: The Board's Investigation and Hearing into Supply Issues and Power Outages on the Island Interconnected System

In relation to your letter of March 7, 2014 wherein you raise the issue of intervenor status, it is noted that the intervenors in this proceeding were established by Order No. P.U. 3(2014) issued on February 19, 2014. Notice of how to participate in this proceeding was published beginning on January 17, 2014 requiring that persons wishing to become an intervenor apply to the Board by January 31, 2014. In addition the pre-hearing conference on February 5, 2014 provided a further opportunity to become involved in the proceeding.

The Board may consider a late application for intervenor status in some circumstances but such application must be shown to be reasonable and necessary in the circumstances with due regard to an efficient and effective process and potential prejudice to the parties. The applicant must demonstrate that their interest is relevant to the matter and that their participation will assist the Board in its determination.

Should you wish to make application for intervenor status at this time, you must file an intervenor submission clearly setting out your interest in the matter, including the detailed information required to be filed by section 9 of the *Regulations*, a copy of which is attached. In addition you must demonstrate that your request will not prejudice the parties or jeopardize an efficient and effective process. Late applications for intervenor status will be circulated to the parties for comment and the Board will issue an order thereafter.

Yours truly,


Cheryl Blundon
Board Secretary

/bds
Encl.

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Important Information

(Includes details about the availability of printed and electronic versions of the Statutes.)

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How current is this regulation?



**NEWFOUNDLAND AND LABRADOR
REGULATION 39/96**

Board of Commissioners of Public Utilities Regulations, 1996
under the
Public Utilities Act
(O.C. 96-476)

(Filed May 28, 1996)

Under the authority of section 20 of the *Public Utilities Act* the Board Of Commissioners of Public Utilities with the approval of the Lieutenant-Governor in Council makes the following regulations.

Dated at St. John's , May 15, 1996 .

A. Faour
Deputy Clerk of the Executive Council

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Short title

1. These regulations may be cited as the *Board of Commissioners of Public Utilities Regulations, 1996* .

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Definitions

2. In these regulations

- (a) "applicant" means a person who makes an application to the board to hear or determine any matter;
- (b) "board" means the Board of Commissioners of Public Utilities;
- (c) "intervenor"
 - (i) when used in connection with proceedings commenced by an application to the board, means a person, other than the applicant, who files a submission, and
 - (ii) when used in connection with proceedings commenced by the board on its own motion, means a person who files a submission;
- (d) "person" includes a corporation, unincorporated groups of individuals, partnership and a government department or agency; and

- (e) "party" means applicant or intervenor.

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Application of rules

- 3.** (1) Unless otherwise directed by the board, these regulations apply to proceedings
- (a) arising from an application to the board for an order, approval, or recommendation; and
 - (b) arising upon the calling of a public hearing by the board on its own motion.
- (2) In any application or other proceeding, the board may dispense with, vary or supplement any provisions of these regulations on those terms as the board considers necessary.
- (3) Unless the board otherwise orders, a failure to comply with these regulations shall be treated as an irregularity and does not nullify a proceeding, a step taken, any document or an order made.
- (4) Before the disposition of an application or proceedings, the board may issue those directions as it considers necessary for the proper consideration and disposition of an issue.

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Form of application

- 4.** An application shall
- (a) contain a concise statement of
 - (i) the order, approval, or recommendation applied for,
 - (ii) where applicable, the provision of the Act, or regulations under which this application is made,
 - (iii) the information or particulars required by the Act or regulations to be filed in support of the application,
 - (iv) the reasons why the applicant believes the board should grant the application, and
 - (v) the qualifications of expert witnesses, if any, whose opinions are to be relied upon;
 - (b) be endorsed with the name, address and telephone number of the applicant or the applicant's agent to whom communications may be sent; and
 - (c) be signed by the applicant or the agent for the applicant.

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Copies of applications

- 5.** (1) The board shall determine the number of copies of an application and information and particulars to be provided to the board in support of the application.
- (2) Copies of applications shall be made available by the board to an intervenor.

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Notice of application

6. (1) Notice of applications to the board for an order, approval or recommendations shall be given to those persons and within the time the board considers necessary.

(2) In matters where the board determines that a public hearing will be held regarding an application, the board shall publish or broadcast notice of the public hearing for a reasonable period before the public hearing as the board considers necessary.

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Public notice

7. (1) A public notice under subsection 6(2) shall

- (a) describe the subject matter of the application or proceedings;
- (b) state the place of the public hearing and the time of the public hearing, which shall be not less than 10 days after the date of the notice;
- (c) state that copies of the application and information and particulars filed in support may be obtained by interested persons from the clerk of the board;
- (d) state the name and address of the applicant and the applicant's agent;
- (e) state the time and place for intervenors to file submissions; and
- (f) state those other particulars as the board considers appropriate.

(2) The board may also order service of the notice of application or the notice for public hearing to be given by the applicant to those persons as the board considers appropriate and the board may prescribe the manner of service of that notice.

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Service of documents

8. (1) Service of a document may be effected by personal delivery to the person or person's agents or by certified mail to the person or person's agents.

(2) Notwithstanding subsection (1), service of a document may be made by telephone transmission of a facsimile of that document, and shall be considered to be served if the person receiving the document acknowledges receipt of it.

(3) Notwithstanding subsection (1), when a public hearing is in progress, service to the parties present at the public hearing shall be effected

- (a) by making copies of the document available to the parties present at the public hearing;
- (b) by serving a copy on any other party who is not present and requests a copy of the document; or
- (c) as may otherwise be directed by the board.

(4) The board may direct service of any document by public advertisement, and that service shall be considered to be effected on the last day of publication where there is more than one day of publication.

(5) The board may, in its discretion, require proof by affidavit of service, including the means used to effect service.

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Intervenor's submission

9. An intervenor's submission shall

- (a) be signed or executed by the intervenor or an agent for the intervenor;
- (b) contain a concise statement of
 - (i) the intervenor's interest in the matter,
 - (ii) the disposition of the proceedings which the intervenor advocates, if any,
 - (iii) the facts the intervenor proposes to show in evidence,
 - (iv) the reasons why the intervenor believes the board should decide in the manner advocated,
 - (v) the qualification of expert witnesses, if any, whose opinions are to be relied upon, and
 - (vi) a list of that information and support documents that may be useful in explaining the intervenor's representation;
- (c) if the intervenor proposes to confine the representation to the cross examination of an argument at the public hearing, so state; and
- (d) be endorsed with the name and address of the intervenor or the intervenor's agent to whom communication may be sent.

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Copies of intervenor's submission

10. (1) An intervenor or the intervenor's agent shall file copies of the intervenor's submission with the board.

(2) Upon the filing of an intervenor's submission, the board shall supply copies of the submission to other parties.

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Inclusion of extraneous issues

11. Where any matter raised by or set out in the submission of an intervenor appears to the board to be not in response to the particular application or to have implications of importance beyond its reference to the application, the board may

- (a) direct an amendment of the intervenor's submission; or
- (b) order that the matter shall not be considered at the public hearing of the application, but that it may be heard as another application.

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Reply to intervention

12. An applicant in a matter under consideration at a public hearing may file with the board a reply to any intervention and the board shall deliver a copy of the reply to the other parties, within a time limit as determined by the board.

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Letter of comment

13. (1) When notice has been given of a proceeding, an interested person, who does not wish to intervene in respect of the proceeding and thus not be considered a party, but who wishes to communicate views to the board regarding the proceeding, may file a letter commenting on the proceeding which describes the nature of the person's interest in the proceeding and states clearly the person's views regarding the proceeding together with any relevant information that may be useful in explaining or supporting those views.

(2) A person who files a letter of comment under subsection (1) and who wishes to make an oral presentation to the board shall indicate that intention in the letter of comment.

(3) The board shall provide a copy of all letters of comment filed to the applicant and to all other parties.

(4) Any party may file a reply to the letter of comment and serve it on the person who filed the letter and those other persons as the board may direct.

(5) The letters of comment and the replies filed shall be on the public record.

(6) A person other than a party shall not make a representation at a public hearing except with the permission of the board.

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Information requests

14. (1) Where, in any proceeding, the board permits information requests to be directed to a party for the purpose of a satisfactory understanding of the matters to be considered, the information requests shall be

(a) addressed to the party from whom the response is sought;

(b) numbered consecutively in respect of each item of information requested;

(c) relevant to the proceeding; and

(d) served, where the board has directed a time limit, within the time limit directed by the board.

(2) A copy of any information request directed to a party under subsection (1) shall be filed with the clerk of the board and served on all parties to the proceeding.

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Response to information request

15. (1) Where an information request has been directed to a party and served on that party in

accordance with the board's directions, the party shall

- (a) provide a full and adequate response to each information request on a separate page, or, by agreement between the parties, on a computer disk or diskette; and
- (b) file with the clerk of the board and serve on all parties to the proceeding a written copy of the responses within the time limit directed by the board.

(2) Notwithstanding subsection (1), a party who is unable or unwilling to provide a full and adequate response to an information request shall

- (a) where the party objects to providing the information requested, provide a response stating the objection and setting out the grounds for the objection; or
- (b) where the party contends that the information necessary to provide a response is not available, provide a response that sets out the reasons for the unavailability of the information and provide that alternative available information as the party considers would be of assistance to the party requesting the information; and
- (c) file with the clerk of the board, as soon as the information is known, without waiting for the information requests response deadline, a copy of the response and serve a copy on all interested parties.

(3) Where the settling of a response to an information request is required, the board may orally or in writing direct all parties

- (a) to appear before the board at a specified time and place for a conference; and
- (b) to submit in writing their position and views on the matter for the purpose of assisting the board.

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Pre-hearing conference

16. The board may before the date fixed for a public hearing request the parties to make submissions in writing or to appear before the board at a time and place to be determined by the board for a conference prior to a public hearing for the purpose of

- (a) simplifying the issues, evidence or disposition of the matter;
- (b) amending the application, or notice of intent to intervene for the purpose of clarification, amplification or limitation;
- (c) admitting certain facts, providing facts by declaration under oath, or using matters of public record;
- (d) exchanging documents and exhibits proposed to be submitted at the public hearing; and
- (e) fixing the order of appearance of intervenors for the public hearing.

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Production and inspection of documents

17. (1) Where in any document filed by a party in connection with a proceeding, a party refers to another document upon which the party intends to rely, any other party may, before the hearing, file and serve a notice in writing upon the party from whom the document is requested to produce that document for inspection and copying.

(2) Any party who fails to comply with the notice given under subsection (1) before the earlier of 10 days of the receipt of that notice or the commencement of the hearing, shall not put the requested document in evidence in the proceeding unless the board is satisfied that there is sufficient reason for the failure to produce the document or the public interest otherwise requires.

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Hearing

18. (1) The order of appearance of participants at a public hearing shall, unless otherwise determined by the board, be as follows:

(a) first

- (i) presentation of evidence by the applicant,
- (ii) cross-examination by an intervenor, board's staff and board, and
- (iii) re-direct by the applicant;

followed by

(b) second

- (i) presentation of evidence by an intervenor,
- (ii) cross-examination by the applicant, board's staff and board, and
- (iii) re-direct by an intervenor;

followed by

(c) argument

- (i) from the applicant,
- (ii) from the intervenor, and
- (iii) from other persons; and

followed by

(d) reply from the applicant.

(2) The board shall take evidence by affidavit in a manner prescribed by the board.

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Questioning of witnesses

19. (1) No cross-examination of a witness shall be permitted other than cross-examination by or on behalf of an applicant, an intervenor or the board or its staff.

(2) A witness may be questioned throughout the proceeding by the board, or by the board staff.

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Direction by board

20. (1) At the conclusion of the examination of evidence presented by the parties at the public hearing of an application, the board may direct

- (a) that written argument and replies to it be filed with the board;
- (b) the time within which the arguments and replies to them shall be made;
- (c) the order of which the parties shall file the argument or replies;
- (d) to whom the argument or replies shall be sent; and
- (e) the time and the order in which oral argument is to be given.

(2) The board may order that written or oral argument and replies to them shall be made on any issue arising during the hearing of an application, and it may adjourn the proceedings for that purpose.

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Notice to other persons

21. If the board is of the opinion that a person who is not a party to a proceeding before the board ought to have notice of the proceeding, the board may direct that notice to be given to that person by a party to the proceedings, and when an order is given the proceedings in respect of which the order was given shall not proceed until the person is given notice.

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Alternate proceeding by board

22. When the board does not proceed by way of a public hearing, the board may,

- (a) dispose of the matter on the basis of the written documentation before it;
- (b) require further information to be furnished; or
- (c) issue procedural orders and invite submissions from any person who may have an interest in the proceeding.

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Financial disclosure of corporations

23. (1) In all applications made to the board by corporations for authority to issue shares, bonds or other securities, the application shall set out

- (a) the financial condition of the applicant;
- (b) the amount and terms of issue to the shares, bonds or other securities;
- (c) the proposed disposition of the proceeds of the issue; and
- (d) the terms of any underwriting arrangements relating to the issue.

(2) Before issuing an order upon an application made under subsection 23(1), the board may

require that further or other information be provided by the corporation as is reasonably necessary for the board to fully consider the application.

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Documents provided by corporation

24. When a corporation is required under these regulations to disclose its financial condition, the corporation shall provide,

- (a) a copy of the corporation's comparative financial statements for the most recently completed financial year in respect of which those financial statements have been issued, together with the report of the auditor;
- (b) a copy of the corporation's comparative financial statements for each quarter subsequent to the financial year referred to in paragraph (a); and
- (c) further or other information as the board may require to fully consider the application.

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Order re: issue of shares, bonds or other securities

25. An order of the board approving an issue of shares, bonds or other securities, or part of them under section 23 may

- (a) prescribe the disposition of the proceeds of the issue;
- (b) require the applicant corporation to report under oath upon the sale or disposition of the stocks, bonds or other securities;
- (c) require the applicant corporation to report periodically upon the disposition of the proceeds of the issue; or
- (d) require the applicant corporation to do any act or thing which the board considers necessary and which is appropriate to the circumstances.

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Amendments

26. Notwithstanding the other provisions of these regulations, the board, in its discretion may allow any of the proceedings to be amended or may order to be amended or struck out any matters which are irrelevant or may tend to prejudice, embarrass or delay a fair hearing of an application or other proceeding upon its merits.

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Preliminary questions of law

27. If it appears to the board that there is a question or issue of law or of jurisdiction or of practice or procedure that should be decided before a proceeding continues, the board may,*

- (a) direct the question or issue to be raised for determination by the board; or
- (b) state a case as provided in the Act,

and the board may, pending the determination of that question or issue, order the whole or any part

of the proceeding to be stayed.

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Rehearings

28. (1) Applications for re-opening an application after final submission, or for rehearing after final order, must state the grounds upon which the application is based if the application to re-open the matter to receive further evidence, the nature and purpose of the evidence must be stated if the application is for a rehearing or argument, the applicant must state the findings of fact or of law claimed to be erroneous and a brief statement of the alleged error.

(2) When a decision or order of the board is sought to be reversed, changed, or modified by reason of facts and circumstances arising subsequent to the hearing, or to the order, or by reason of consequences resulting from compliance with that decision, order or requirement which are claimed to justify or entitle a reversal, change or modification of the facts, circumstances or consequences must be fully set out in the application.

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Repeal

29. The Public Utilities Regulations, 1950, Newfoundland Regulations 103/78, are repealed.

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