

**Public  
Utilities  
Board**

**Régie  
des  
services  
publics**

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

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## PART 1 — GENERAL MATTERS

### Definitions

1 The following definitions apply in these rules.

**“Act”** means *The Public Utilities Board Act*, C.C.S.M. c. P280.

**“application”**, unless the context otherwise requires, does not include an application for intervener status.

**“board”** means The Public Utilities Board continued under the Act and includes a panel of the board unless stated otherwise.

**“board counsel”** means the legal counsel retained by the board for the purpose of a hearing.

**“business day”** means any day other than

- (a) a Saturday; or
- (b) a holiday as defined in *The Interpretation Act*, C.C.S.M. c. I80 which, for certainty, includes a Sunday.

**“document”** includes an electronic record and electronic information.

**“file”** means to file with the secretary.

**“order”** means an order of the board.

**“party”** means an applicant or approved intervener, but does not include the board, board counsel, an independent expert consultant or a presenter.

**“person”** includes a body corporate, partnership and an association or organization, whether incorporated or not.

**“secretary”** means the secretary appointed under section 8 of the Act or an individual appointed under subsection 18(5) of the Act.

**“utility”** means a utility as defined in the Act.

### Purpose

2 The purpose of these rules is to ensure that proceedings before the board are conducted in a manner that is fair and transparent while being as efficient as practicable.

**Application**

- 3(1) These rules apply to all hearings of the board unless the board directs otherwise.
- 3(2) In any hearing, the board may dispense with, vary or supplement any of the rules if it is of the opinion that doing so furthers the purpose of these rules.

**Procedural directions**

- 4(1) The board may issue a procedural direction in any hearing. A procedural direction prevails over a rule that conflicts with the direction.
- 4(2) A person intending to file an application with the board may make a written request to the secretary for the board to issue a procedural direction before the application is filed.
- 4(3) A party to the hearing of an application may make a request for the board to issue a procedural direction governing the application at any time. The request may be made
- (a) in writing to the secretary; or
  - (b) orally to the panel hearing the application.

**Filing of documents**

- 5(1) A person filing a document must do so
- (a) by mailing or delivering a physical copy to the secretary;
  - (b) by e-mailing a copy to the secretary;
  - (c) with the consent of the secretary, by uploading the document to a file-sharing site and providing the secretary access to download the document; or
  - (d) in any other manner directed by the board.
- 5(2) A party filing a document in a hearing for which board counsel has been appointed, or in which there are other parties, must serve a copy of the document on board counsel and the other parties.
- 5(3) The board or the secretary may direct a person who files a document with the board to serve a copy of the document on a specified person or class of persons. The directive is in addition to the service requirement under subsection (2).
- 5(4) A document is deemed to have been filed with the board on the day the secretary receives it, unless the secretary receives it after 5:00 PM central time, in which case it is deemed to have been filed on the next business day.

- 5(5) If a party is unable to file a document within the time directed by the board, the person must request an extension in writing before the time for filing the document has expired.
- 5(6) The board may abridge or extend a deadline for filing a document with the board and issue directions with respect to filings.
- 5(7) A document filed with the board is public unless the board approves a request to file the document in confidence under Division 5 of Part 3.

#### **Secretary may reject incomplete filing**

- 6(1) The secretary may reject an application filed in accordance with section 5 if, in their opinion, the application is incomplete or fails to meet the requirements specified by the board for the filing of such applications.
- 6(2) The rejection must be in writing and set out the specific changes required to the application for the secretary to consider the application to be complete.
- 6(3) The applicant may refile an amended application that includes the changes required under subsection (2).
- 6(4) The date of filing for the application is deemed to be the date on which the secretary considers the application to be complete.

#### **Service of documents**

- 7(1) Subject to subsection (2), a document required to be served on a person under these rules may be served
  - (a) by personal delivery;
  - (b) by courier or ordinary mail to the person's last known address;
  - (c) by electronic means; or
  - (d) by another method directed by the board.
- 7(2) A document may be served by electronic means only if the person being served has registered an email address or other electronic means with the board for the purpose of receiving documents and the document is sent to that email address or provided by those means.
- 7(3) A document is deemed to have been served on the day the person receives it, unless the person receives it after 5:00 PM central time, in which case it is deemed to have been served on the next business day.

- 7(4) If a party to a hearing has a legal representative, a document may be served on that party by serving the legal representative.
- 7(5) The board may require a person to prove that a document has been served by executing an affidavit of service and filing it with the secretary.

**Failure to comply with the rules**

- 8(1) If an applicant or a party to a hearing fails to comply with any of these rules or with a direction of the board, the board may
- (a) dismiss the application or refuse to process it, if the failure is by the applicant;
  - (b) adjourn the hearing until the failure to comply has been remedied;
  - (c) make any order or determination the board considers necessary to ensure the fair, expeditious and efficient determination of an issue despite the failure to comply; and
  - (d) if the party is an intervener, reduce a cost award to that intervener.
- 8(2) If the board takes an action under subsection (1), it must do so in writing and set out
- (a) the board's reasons for taking the action; and
  - (b) if the board is adjourning the hearing, any requirements the applicant must meet for the board to resume the hearing.
- 8(3) For certainty, if the board dismisses an application to review and vary an order of the board under this section, subsection 58(8) applies to the dismissal and the applicant is not entitled to bring an application to review and vary the dismissal.



## PART 2 — APPLICATIONS

### Division 1 — How to Make an Application

#### Authority to apply

- 9 A person authorized under an Act of the Legislature to seek a determination of the board may make an application to the board seeking any relief the board is authorized to grant under that Act of the Legislature.

#### Filing process

- 10(1) An application must be delivered to the secretary in physical form or by electronic means.
- 10(2) The secretary may require the applicant to file one or more physical copies of the application even if the application is filed by electronic means.
- 10(3) An application must
- (a) contain a detailed index of the entire application, which may be updated as additional documents are filed;
  - (b) set out the nature of the order sought;
  - (c) contain reasons for the application, including a clear and concise statement of the facts supporting the application;
  - (d) contain page numbers for each page of the application;
  - (e) attach any documents relied upon in support of the application;
  - (f) include any minimum filing requirements established by the board under section 11;
  - (g) include a certification by the applicant or an authorized representative of the applicant that states as follows:

“I, \_\_\_\_\_ [NAME], \_\_\_\_\_ [TITLE] of  
the Applicant, certify that the information set out in this  
Application is truthful and correct.”
  - (h) be signed by the individual making the certification required under clause (g); and
  - (i) state the name, mailing address, e-mail address and telephone number of the applicant or the authorized representative that the board may use to communicate with the applicant or serve any documents on the applicant.

**Minimum filing requirements**

- 11(1) The board may establish minimum filing requirements for an application or class of applications.
- 11(2) Minimum filing requirements must be sequentially numbered and may be grouped by subject matter.
- 11(3) Before establishing minimum filing requirements, the board
- (a) must consult with the applicant regarding the proposed scope of the minimum filing requirements; and
  - (b) may consult with common interveners if the board considers it appropriate to do so.
- 11(4) In establishing the minimum filing requirements, the board must have regard to any feedback received as part of the consultation process.

**Public Notice**

- 12(1) The board may direct that an application, or a particular type of application, be subject to a public notice in a form and manner approved by the board.
- 12(2) For the purpose of subsection (1), the board may require the applicant to
- (a) publish the public notice in one or more newspapers of record;
  - (b) publish the public notice on the applicant's website;
  - (c) publish the public notice on social media or circulate it by other electronic means;
  - (d) serve a copy of the public notice on any person;
  - (e) include a copy of the public notice in bills or other documents sent to the applicant's customers; and
  - (f) publish a reminder notice.
- 12(3) A public notice must
- (a) state the date, time and place of the hearing or pre-hearing conference, as the case may be;
  - (b) include a clear and concise statement describing the substance of the application, including any proposed rate changes; and
  - (c) be written in plain language understandable to the public.

- 12(4) If a hearing of the application is to take place outside Winnipeg, the board may require the applicant to arrange for a radio, television or internet announcement of the hearing in addition to providing public notice in accordance with subsection (2).

### **Withdrawing an application**

- 13 A person who has made an application may withdraw the application at any time by
- (a) providing written notice to the secretary; and
  - (b) copying the notice to any board counsel or interveners that have been appointed or approved for the hearing of the application.

## **Division 2 — Participants**

### **Role of board counsel and advisors**

- 14(1) The board may appoint or designate board counsel and advisors for the purpose of any hearing before it.
- 14(2) The role of board counsel and advisors is to assist the board in testing the evidence presented and understanding the arguments made in the hearing of an application.

### **Independent expert consultants**

- 15(1) The board may retain, or authorize board counsel to retain, an independent expert consultant to provide evidence on an issue in a hearing if the board is of the opinion that such evidence would assist the board in adjudicating the issue.
- 15(2) The role of an independent expert consultant is to provide impartial, fair and objective opinion evidence in a manner that assists the board.
- 15(3) Subsection 28(3) applies to the evidence of an independent expert consultant, with necessary changes.
- 15(4) The board may appoint legal counsel to represent an independent expert consultant in the hearing.

### **Interveners**

- 16(1) The board may invite applications for intervener status in a hearing if, in the opinion of the board, the participation of one or more interveners in the hearing is likely to
- (a) assist the board in gaining a better understanding of the issues; or
  - (b) enable the perspective of different groups of ratepayers to be fairly represented.

16(2) An application for intervener status must

- (a) be in the form set out in Appendix A, or in another form approved by the board for that purpose, and filed with the secretary by the deadline established by the board;
- (b) clearly identify the specific issues on which the prospective intervener intends to intervene;
- (c) demonstrate, to the satisfaction of the board, that the prospective intervener
  - (i) would be affected, or represents persons who would be affected, by the board's decisions in the hearing, or
  - (ii) has specific information or expertise relevant to the matter that would facilitate the board's review of the issues in the hearing; and
- (d) set out whether the intervener intends to
  - (i) participate in, and appear at, the public hearing,
  - (ii) ask information requests,
  - (iii) provide written or oral evidence in the hearing,
  - (iv) cross-examine witnesses,
  - (v) retain any expert consultants, and
  - (vi) seek a cost award.

16(3) An intervener who plans to seek a cost award under Part 6 must

- (a) file a completed intervener budget, in a form approved by the board for that purpose, together with their application for intervener status; and
- (b) file an updated intervener budget whenever the intervener expects a material change from the previously filed budget.

16(4) The board must give the applicant in a hearing an opportunity to make submissions with respect to any application for intervener status.

16(5) After receiving submissions from the applicant in the hearing, or after the deadline for making submissions has passed, the board may

- (a) approve an application for intervener status in whole or in part and grant the applicant intervener status on conditions the board considers appropriate; or

- (b) refuse an application for intervener status if, in the opinion of the board,
  - (i) the application is frivolous or vexatious,
  - (ii) the intervener did not adequately demonstrate the factors set out in clause (2)(c), or
  - (iii) the scope of the proposed intervention is irrelevant or does not adequately address the issues in the hearing.
- 16(6) The board may approve a joint intervention by two or more prospective interveners if those interveners consent to the joint intervention.
- 16(7) An intervener must take reasonable steps to limit or avoid the duplication of evidence in the hearing.

### **Presenters**

- 17(1) In any hearing, the board may receive written or oral submissions or evidence from presenters.
- 17(2) A presenter is a person who wants to share their perspective with the board but who is not a party to the proceeding within the meaning of these rules.
- 17(3) Each presenter is limited to 15 minutes of submissions or evidence unless the board agrees to extend the time limit.
- 17(4) The board may require a presenter who makes an oral presentation to make a solemn affirmation in accordance with section 47.
- 17(5) A presenter is not subject to cross-examination by board counsel or any party unless the board authorizes the cross-examination. If the board authorizes a presenter to be cross-examined,
  - (a) the board must have regard to the need for parties and board counsel to prepare for the cross-examination; and
  - (b) the cross-examination is not to be included in the time limit under subsection (3).
- 17(6) Before giving weight to the evidence of a presenter, the board must consider whether the evidence is reliable, including whether the presenter made a solemn affirmation or was cross-examined.
- 17(7) A party may organize a panel of presenters in a hearing. Subsections (1) to (6) apply to any presentation made by a member of such a panel.

## PART 3 — PRE-HEARING MATTERS

### Division 1 — Pre-hearing Conferences and Procedural Orders

#### Pre-hearing conferences

- 18(1) The board may hold one or more pre-hearing conferences in a hearing to receive submissions on matters to be addressed in a procedural order.
- 18(2) The board may issue directions to any parties or proposed parties with respect to the procedure and scope of a pre-hearing conference.
- 18(3) For certainty, the board is not required to hold a pre-hearing conference to issue a procedural order.

#### Procedural orders

- 19(1) The board may issue one or more procedural orders in a hearing.
- 19(2) A procedural order may supplement these rules or establish a process that deviates from these rules.
- 19(3) A procedural order may address any matter the board considers appropriate to govern the conduct of the hearing, including any of the following:
- (a) the approval of applications for intervener status;
  - (b) the approval of proposed expert witnesses for interveners, including the scope of their evidence;
  - (c) the pre-qualification of proposed expert witnesses to give opinion evidence on a specific topic;
  - (d) the scope of issues to be considered in the hearing;
  - (e) the scope of issues on which the board will receive
    - (i) written evidence, oral evidence, or both, and
    - (ii) written submissions, oral submissions, or both;
  - (f) the delivery of information requests, including the number of rounds of information requests and any limit on the number of questions that may be asked;
  - (g) the involvement of independent expert consultants and their scope of work;

- (h) the establishment of pre-hearing timetables and hearing timetables, including the establishment of deadlines for any steps in the hearing;
- (i) the order of appearance of any witnesses, presenters and legal counsel during the oral portion of the hearing;
- (j) the establishment of witness panels;
- (k) the establishment of any special procedures to receive evidence, including concurrent evidence sessions, facilitated sessions or technical conferences;
- (l) the receipt of documents in confidence in accordance with Division 5.

### **Technical conferences**

- 20(1) The board may require an applicant or a person regulated by the board to hold a technical conference for the purpose of improving the understanding of the board or interveners of record on any issue that is detailed, technical or complex.
- 20(2) A technical conference may take the form of
- (a) a tutorial presentation;
  - (b) an interactive discussion or workshop; or
  - (c) any other form directed by the board.
- 20(3) The board may appoint a facilitator to lead a technical conference or to prepare a report on the outcome of a technical conference.
- 20(4) The board or the secretary may direct a person holding a technical conference to give notice of the conference to a specified person or class of persons.

## **Division 2 — Evidence**

### **How evidence may be provided**

- 21(1) A person may provide evidence in a hearing in writing or by oral testimony.
- 21(2) Written evidence must include a statement of the qualifications of the individual who prepared the evidence or under whose direction it was prepared.
- 21(3) If a person files written evidence with the board, the board may require the person to
- (a) verify the evidence by means of an affidavit; or

- (b) adopt the evidence in subsequent oral testimony.

21(4) If the person fails to comply with a direction given under subsection (3), the board may strike the evidence from the record.

#### **Pre-filed written evidence**

22(1) A party to a hearing must pre-file all of their written evidence, except for answers to undertakings, before the commencement of the oral portion of the hearing.

22(2) Pre-filed evidence consists of the following:

- (a) in the case of the applicant, the application and any minimum filing requirements;
- (b) all expert reports relied on by a party;
- (c) answers to information requests;
- (d) rebuttal evidence, if any.

22(3) In a hearing in which the board has established a deadline for the submission of pre-filed evidence, a party or witness may update their pre-filed evidence after that deadline only with the permission of the board.

22(4) A party who updates their pre-filed evidence must file both a clean copy of the updated evidence and a red-lined or marked up copy that indicates all changes from the previously filed evidence.

#### **Agreed statement of facts**

23(1) The parties to a hearing may file an agreed statement of facts with the board on all or part of the evidence at issue in the hearing.

23(2) The board is not required to accept a fact agreed upon between the parties and may direct the parties to provide evidence to support the fact.

#### **Documents of corporation**

24 If a document has been issued by a corporation or any officer, director or employee of that corporation, the document is admissible in evidence without calling the author as a witness.

#### **Evidence filed in other hearing**

25(1) The board may rely on any of the following as evidence in the hearing:

- (a) evidence filed in another hearing before the board;



- (b) evidence filed with another Canadian federal or provincial regulatory tribunal;
- (c) any report, decision, finding or order previously made by the board or any other Canadian federal or provincial regulatory tribunal.

25(2) A party may rely on any evidence referred to in subsection (1) with the permission of the board.

25(3) If the board relies on any evidence described in subsection (1) or permits a party to do so, it must provide the other parties with an opportunity to challenge or comment on the evidence.

### **Exhibits**

26(1) In every hearing, the secretary must prepare and update an exhibit list that lists each document filed in the hearing. The exhibit list

- (a) must include an alphanumeric identifier for each party to the hearing; and
- (b) must sequentially number each document filed by a party in the order in which it was filed.

26(2) A party seeking to file a document as an exhibit during a hearing must provide a copy of the document to the secretary and to all other parties to the hearing.

### **Affidavits**

27(1) An affidavit filed with the board is to be limited to statements of fact within the knowledge of the individual making the affidavit.

27(2) If a statement in an affidavit is based on information or belief, the source of the information and the grounds for believing it must be set out in the affidavit.

27(3) An exhibit referred to in an affidavit must be marked and attached to, and filed together with, the affidavit.

### **Expert evidence**

28(1) A party may engage, or two or more parties may jointly engage, an expert to give evidence relevant to a hearing that is within the expert's area of expertise.

28(2) The role of an expert witness is to assist the board by giving opinion evidence that is impartial, fair and objective.

28(3) Written expert evidence must include the following:

- (a) the expert's name, business name, address and general area of expertise;

- (b) the expert's qualifications, including their relevant educational and professional experience in respect of the issues on which the expert is providing evidence;
  - (c) a copy of the instructions provided to the expert in relation to their evidence in the hearing;
  - (d) an acknowledgment that the expert has a duty to provide independent opinion evidence that is fair, objective and non-partisan;
  - (e) a list of the documents on which the expert's evidence is based, including a description of each document, any factual assumptions made in utilizing the document and any research conducted with respect to the document;
  - (f) in the case of evidence provided in response to the evidence of another expert, a summary of the areas of agreement and disagreement with that evidence.
- 28(4) A party who files written expert evidence in a hearing in support of the party's application or position must ensure that the expert is available and willing to
- (a) answer information requests in respect of their evidence;
  - (b) testify in the hearing; and
  - (c) be cross-examined on their written evidence and testimony.

### **Production of documents**

- 29(1) A party who intends to rely on a document in a hearing must produce a copy of that document in the party's written evidence.
- 29(2) The board, on its own initiative or on the motion of any party to a hearing, may order a party to produce a document related to the hearing.

### **Subpoenas**

- 30(1) The board, on its own initiative or on the motion of a party, may direct the secretary to issue a subpoena requiring the person named in the subpoena to do any of the following:
- (a) produce any documents specified in the subpoena by a specific date, if those documents are under the person's control;
  - (b) attend before the board at a specific date time, and place to be examined in a hearing.
- 30(2) A subpoena must be served on the person named in the subpoena

- (a) by personal service in accordance with subsection 16.02(1) of the *Court of King's Bench Rules*, M.R. 553/88; or
  - (b) by substituted service in a manner authorized by the board.
- 30(3) A person served with a subpoena may object to the subpoena by bringing a motion to the board in accordance with Division 4 by the earlier of
- (a) 14 days after having been served with the subpoena; or
  - (b) the date specified in the subpoena for the production of documents or attendance at a hearing.
- 30(4) After hearing a motion objecting to a subpoena, the board may confirm, vary or quash the subpoena.

#### **Amendments and striking out**

31 In any hearing, the board may

- (a) allow a person to amend a document filed in the hearing; or
- (b) order any portion of a document to be amended or struck out if the board finds it to
  - (i) be abusive, offensive, frivolous or vexatious, or
  - (ii) distract from the genuine issues in the hearing.

#### **Evidence by non-parties**

32(1) In any hearing, the board may request a person who is not a party to provide written or oral evidence on terms the board considers appropriate if it finds that the requested evidence

- (a) is likely to contribute to the board's understanding of the issues in the hearing; and
  - (b) cannot feasibly be obtained from parties to the hearing.
- 32(2) When making the request and establishing terms, the board must have regard to the need for parties to be able to test and respond to the evidence of the non-party.

### Division 3 — Information Requests

#### Issuance

- 33(1) The board may issue, and may authorize a party to or independent expert consultant for a hearing to issue, one or more rounds of written information requests to another party on the written evidence of that party.
- 33(2) The purposes of information requests are to
- (a) clarify the written evidence;
  - (b) test the written evidence;
  - (c) enable a better understanding of the issues in the hearing;
  - (d) complete any gaps in the written evidentiary record; and
  - (e) expedite the hearing by reducing the need for oral testimony or cross-examination.
- 33(3) A party may not issue an information request on an issue
- (a) that is unrelated to the hearing; or
  - (b) that the board has ruled to be out of scope for the hearing.
- 33(4) For the purpose of identifying information requests, the board may assign each party to a hearing a unique identifier or abbreviation.
- 33(5) Unless the board orders otherwise, second and subsequent round information requests may only be asked in respect of
- (a) responses to previous-round information requests; or
  - (b) additional evidence filed in the hearing since the deadline for asking previous-round information requests.
- 33(6) Information requests must be in the form attached as Appendix B, or in another form approved by the board for that purpose.

#### Responses to information requests

- 34(1) A person to whom an information request is issued must fully answer the request to the best of their ability within the time specified by the board.
- 34(2) A response to information requests must be
- (a) filed with the secretary; and

- (b) copied to board counsel and all parties to the hearing.

34(3) Each response to an information request must be formatted as follows:

- (a) the response must begin on a separate page;
- (b) the question must be repeated at the beginning of the page;
- (c) subparts of a question may be answered on the same page;
- (d) the response must include, at the top of the page, the information request number and the date the response is filed.

### **Incomplete information requests**

35(1) If a person to whom an information request has been issued is unable or unwilling to fully answer the request, the person must provide a response that includes the following:

- (a) if the information request is not relevant, an explanation as to why it is not relevant;
- (b) if the information required to answer the information request is unavailable,
  - (i) an explanation as to why the information is unavailable,
  - (ii) an explanation of the steps taken to obtain the information, and
  - (iii) any alternative relevant information pertaining to the issue raised in the information request that is available to the person answering the request;
- (c) if the information sought is of a confidential nature,
  - (i) an explanation as to why the information is confidential,
  - (ii) an explanation of the harm that could result if the information were to be made public, and
  - (iii) a confidential response filed in accordance with Division 5;
- (d) if the information request does not comply with subsection 33(5), an explanation of why it does not comply;
- (e) in any other case, an explanation of why the person cannot answer the request or is unwilling to answer it.

- 35(2) A person receiving an incomplete response to an information request may bring a motion to the board in accordance with Division 4 to compel the person to whom the information request was directed to fully answer it.

#### **Division 4 — Motions**

##### **Motions**

- 36(1) A party seeking an order from the board in the course of a hearing may make a motion to the board.
- 36(2) A motion must
- (a) be in writing;
  - (b) set out the relief sought, the relevant facts and the reasons for the order sought;
  - (b) be filed with the secretary no later than six days before the motion is heard; and
  - (c) be copied to board counsel and all parties to the hearing.
- 36(3) Any party to the hearing may respond to the motion. The response must be
- (a) in writing;
  - (b) filed with the secretary no later than 2:00 PM central time two days before the motion is heard; and
  - (c) copied to all other parties to the hearing.
- 36(4) A party relying on any documents in support of the motion or in response to the motion must include those documents with their motion or response, as the case may be.
- 36(5) A motion may be supported by affidavit evidence or, with the permission of the board, by oral evidence.
- 36(6) Despite subsection (2), a party to a hearing may make a motion orally or in writing, without notice, at any time during the oral portion of the hearing. The motion may be heard in the manner directed by the board.
- 36(7) After hearing a motion, the board may grant the relief sought in whole or in part or deny the relief.

## Division 5 — Confidential Filings

### Request to file information in confidence

37(1) A person filing a document with the board, or a person whose information is included in the filing, may request that the board receive all or part of the document in confidence.

37(2) The request must be in writing and include the following:

- (a) reasons for making the request, including a description of
  - (i) why the information should be treated as confidential, and
  - (ii) the harm that could result if the information were to be made public;
- (b) a confidential unredacted version of the document that
  - (i) is marked “confidential”,
  - (ii) is printed on blue paper or, in the case of an electronic document, is provided through a secure medium, and
  - (ii) if applicable, sets out which portions of the document are confidential;
- (c) a proposed redacted version of the document.

37(3) The request must be addressed to the secretary and copied to board counsel and all parties to the hearing in which the request is made.

37(4) The request itself, other than the unredacted document required under clause (2)(b), is not confidential unless the board orders otherwise.

### Objections

38(1) A party to a hearing in which a person requests that the board receive a document in confidence may object to the request within 10 days of the request being filed with the secretary.

38(2) An objection must be

- (a) in writing;
- (b) addressed to the secretary; and
- (c) copied to board counsel and all parties to the hearing.

38(3) The secretary may extend or abridge the time for objecting.

- 38(4) The party who requested confidentiality may reply to an objection within seven days of the objection being made, unless the secretary extends or abridges the time to file a reply.

**Confidentiality criteria**

- 39(1) The board may receive all or part of a document in confidence if, in the opinion of the board, the need to maintain confidentiality outweighs the desire for hearings of the board to be public.
- 39(2) The person who filed the document has the burden of proving that the requirement of subsection (1) is met.
- 39(3) In adjudicating a request for confidentiality, the board may consider any of the following:
- (a) the potential harm that could result from disclosure, including whether making the information public could result in
    - (i) undue financial gain or loss to any person,
    - (ii) prejudice to the competitive position of any person,
    - (iii) a breach of contractual obligations by any person, or
    - (iv) interference in negotiations carried out by a party to the hearing;
  - (b) whether the information consists of proprietary intellectual property or of financial, commercial, scientific or technical material that is consistently treated confidentially by the person filing it with the board;
  - (c) whether the information relates to public security;
  - (d) whether the information is personal information;
  - (e) whether the Manitoba Ombudsman or a court has previously decided that similar information should be made public or kept confidential;
  - (f) whether the board has previously held that similar information should be kept confidential;
  - (g) whether the information is required by legislation to be kept confidential;
  - (h) whether the person whose information is included in the document has provided evidence to support the claim for confidentiality.
- 39(4) Information that is in the public domain is not confidential.



**Orders that may be made**

40 In adjudicating a request for confidentiality, the board may do any of the following:

- (a) order that the document be kept confidential, in whole or in part;
- (b) order that the document be placed on the public record, in whole or in part;
- (c) direct the person filing the document to make revisions to any proposed redactions to the document placed on the public record;
- (d) direct the person filing the document to describe the confidential portions of the document and place that description on the public record;
- (e) make any other order the board considers to be in the public interest.

**If request is denied**

41(1) If the board denies a request for confidentiality, the party who filed the document may, within seven days after the denial, make a request to the board to withdraw the document from the record.

41(2) The board must approve the request and allow the party to withdraw the document from the record unless the board finds that

- (a) the information is relevant to a matter at issue in the hearing and of significant probative value; and
- (b) the probative value of the information outweighs any prejudice that may result from the information becoming public.

41(3) If the person who filed the document has appealed the board's decision to deny a request for confidentiality, the board may delay a decision under this section until the appeal has been decided.

41(4) Despite subsection (1), no request may be made in respect of information that was required to be filed under an order or directive of the board.

**Access by board members, staff, advisors**

42(1) The board's members and staff, as well as any external board counsel and advisors retained by the board for the purpose of advising it, are entitled to access confidential information that relates to their work for the board, unless the board orders otherwise.

42(2) Before receiving access to confidential information, external board counsel and advisors to the board must execute and deliver to the secretary a Declaration and Undertaking in the form set out in Appendix C, or in another form approved by the board for that purpose.

- 42(3) A person who executes and delivers a Declaration and Undertaking in accordance with subsection (2) must comply with its terms.

**Access by third parties**

- 43(1) A party to a hearing in which confidential information has been filed may request the board to make an order authorizing that party to receive access to the confidential information.

- 43(2) The request must

- (a) be in writing and made to the secretary;
- (b) be copied to the person who filed the confidential information and all other parties to the hearing; and
- (c) include a description of why the party making the request seeks access, what they are planning to do with the information and how the information relates to their participation in the hearing.

- 43(3) The board must give the party who filed the confidential information an opportunity to object and respond to a request for access.

- 43(4) The board may

- (a) approve the request for access in whole or in part;
- (b) deny the request; or
- (c) approve any part of the request subject to conditions the board considers appropriate.

- 43(5) Before receiving access to confidential information, a person approved to receive access under this section must execute and deliver to the secretary a Declaration and Undertaking in the form set out in Appendix D, or in another form approved by the board for that purpose.

- 43(6) A person who executes and delivers a Declaration and Undertaking in accordance with subsection (5) must comply with its terms.

**Access by independent expert consultants**

- 44 When appointing an independent expert consultant for a hearing, the board

- (a) may determine whether the consultant is entitled to receive access to confidential information; and

- (b) if the board authorizes the independent expert consultant to receive access to confidential information, must require them to execute a Declaration and Undertaking in a form acceptable to the board.

**Certificate of Destruction**

- 45 A person who is required to destroy or return confidential information under the terms of a Declaration and Undertaking must execute and file with the secretary a Certificate of Destruction in the form set out in Appendix E, or in another form approved by the board for that purpose, as soon as practicable after having destroyed or returned the confidential information.

## PART 4 — HEARINGS

### Sequence of hearing steps

46(1) An oral hearing consists of the following steps and sequence unless the board directs otherwise:

- (a) opening comments:
  - (i) panel chair,
  - (ii) board counsel,
  - (iii) counsel for the applicant,
  - (iv) counsel for the independent expert consultant, if any,
  - (v) counsel for each intervener;
- (b) evidence of the applicant:
  - (i) direct evidence,
  - (ii) cross-examination by board counsel,
  - (iii) cross-examination by counsel for the independent expert consultant, if any,
  - (iv) cross-examination by counsel for each intervener,
  - (v) re-examination on issues raised on cross-examination;
- (c) evidence of the independent expert consultant:
  - (i) direct evidence,
  - (ii) cross-examination by board counsel,
  - (iii) cross-examination by counsel for the applicant,
  - (iv) cross-examination by counsel for each intervener,
  - (v) re-examination on issues raised on cross-examination;
- (d) evidence of each intervener:
  - (i) direct evidence,
  - (ii) cross-examination by counsel for the applicant,

- (iii) cross-examination by counsel for each intervener,
  - (iv) cross-examination by board counsel,
  - (v) re-examination on issues raised on cross-examination;
- (e) final argument:
  - (i) applicant,
  - (ii) each intervener,
  - (iii) reply by applicant;
- (f) closing comments by the panel chair.

46(2) If there is more than one independent expert consultant or intervener, the steps set out in clause (1)(c) and (d) are to be repeated as necessary.

### **Solemn affirmation**

47 A witness presenting oral evidence must solemnly affirm to tell the truth. The affirmation is to be administered by the secretary at the beginning of the testimony of the witness.

### **Policy witness**

48 If the applicant is a corporation, it must make available a senior officer of the corporation to be questioned on policy issues related to the application.

### **Oral evidence to be in summary form**

49 A party or witness presenting oral evidence in a hearing must do so in summary form that clarifies or supplements the pre-filed written evidence of the party or witness.

### **Additional written evidence filed during the hearing**

50 A party may file the following additional written evidence during the hearing:

- (a) presentations intended to supplement oral evidence;
- (b) evidence provided in response to undertakings given during cross-examination.

### **Cross-examination**

51(1) The right to cross-examine witnesses in a hearing is as follows:

- (a) board counsel may cross-examine any witness;

- (b) counsel for the applicant may cross-examine any witness other than a witness appearing for the applicant;
- (c) counsel for an intervener or independent expert consultant may cross-examine a witness if
  - (i) the board has approved the intervener or independent expert consultant to conduct cross-examinations in the hearing,
  - (ii) the scope of testimony of the witness is within the approved scope of issues for the intervener or independent expert consultant, and
  - (iii) the witness is not appearing on the intervener's or independent expert consultant's own behalf.

51(2) Cross-examination during the oral portion of a hearing may focus on the oral evidence of a witness as well as the pre-filed evidence of the witness or the person on whose behalf they are testifying.

### **Final argument**

52(1) Any party to a hearing may deliver final argument at the conclusion of the hearing.

52(2) In any hearing, the board may

- (a) direct that final argument be delivered in writing, orally, or both; and
- (b) issue a directive or guidance to the parties on specific issues to be addressed in final argument.

52(3) Board counsel is not entitled to deliver final argument but may, at the request of the board, provide a summary of the issues and evidence in the hearing.

### **Public access to hearings**

53(1) Hearings are open to the public unless the board directs that all or a portion of the hearing take place in confidence.

53(2) For the purpose of subsection (1), the board may allow members of the public to observe a hearing

- (a) by attending the location of the hearing;
- (b) by watching a livestream of the hearing; or
- (c) by attending the hearing through videoconferencing software or other electronic means.

**Process for confidential hearings**

- 54 When a confidential portion of a hearing begins,
- (a) any person not entitled to participate in the confidential portion of the hearing must leave the hearing room or be disconnected from the videoconferencing software in use during the hearing;
  - (b) the doors to the hearing room are to be locked;
  - (c) the live-stream of the hearing, if any, is to be discontinued;
  - (d) recording and transcription services, if any, must be switched to a separate confidential recording or transcript; and
  - (e) persons in the hearing room or participating by videoconferencing must comply with any additional confidentiality precautions the board considers appropriate in the circumstances.

**Accessibility**

- 55(1) The board must take reasonable steps to ensure that hearing locations are accessible to persons with mobility issues.
- 55(2) On receiving adequate prior notice, the board must arrange for
- (a) sign language interpretation for hearing-impaired persons; or
  - (b) simultaneous translation of testimony or submissions from
    - (i) English into French, or
    - (ii) French into English.

**Transcripts**

- 56(1) The board may retain a court reporter to prepare a transcript of any hearing.
- 56(2) A copy of the transcript must be posted to the board's website as soon as practicable, unless the transcript relates to evidence or submissions provided *in camera*.
- 56(3) The board must make a copy of any transcript relating to evidence or submissions provided *in camera* to those parties entitled to participate in the *in camera* portion of the hearing in paper format or by secure electronic means.

## PART 5 — POST-HEARING MATTERS

### Orders

57(1) After hearing an application, the board may, by written order,

- (a) approve the relief sought in the application, in whole or in part;
- (b) deny the relief sought in the application, in whole or in part; or
- (c) approve any other relief, and make any other directions, the board considers just and reasonable in the circumstances.

57(2) The board must provide written reasons for any order it makes. The reasons may be

- (a) included in the order; or
- (b) provided as soon as practicable after the order is made.

### Applications to review and vary an order

58(1) The board may review and vary an order, on its own initiative or on application by a party affected by the order, if it is satisfied that

- (a) there has been an error in fact, law or jurisdiction;
- (b) there have been new facts or a change in circumstances; or
- (c) the order is no longer in the public interest.

58(2) A party to a hearing before the board may apply to the board to review and vary an order issued in the hearing within 30 days after the order is made.

58(3) Despite subsection (2), a person affected by an order may apply to the board to review and vary the order based on a change in circumstances at any time.

58(4) An application to review and vary an order of the board must be

- (a) in writing;
- (b) filed with the secretary;
- (c) served on all parties to the hearing in which the order was made and, if board counsel was appointed for that hearing, to board counsel; and
- (d) contain the following:
  - (i) a clear and concise statement of the facts relevant to the application,



- (ii) the reasons for the application,
- (iii) an explanation of the nature of the prejudice or damage that has resulted or may result from the order if it is not varied by the board,
- (iv) a description of the remedy sought, and
- (v) the applicant's name, address, telephone number, fax number and email address.

58(5) An application to review and vary that alleges new facts or a change in circumstances must include evidence to support those facts or changed circumstances.

58(6) After receiving an application to review and vary an order, the board may

- (a) approve the application in whole or in part;
- (b) dismiss the application; or
- (c) direct that a hearing be held on any issue raised in the application.

58(7) If the board directs that a hearing be held, it

- (a) must advise all parties to the hearing in which the order was made of the hearing to review and vary the order; and
- (b) may direct the applicant in the hearing in which the order was made to publish a notice of review in the same manner as a notice of hearing.

58(8) Despite subsections (2) and (3), no application to review and vary an order of the board may be brought in respect of

- (a) a decision or order of the board made under this section; or
- (b) a decision or order of the board which has been appealed to the Manitoba Court of Appeal.

### **Corrections**

59 The board may at any time, without a hearing or a notice of review, correct spelling, capitalization, punctuation, grammatical and numerical errors, as well as any errors that are of a clerical, typographical or similar nature.

### **Re-opening closed hearings**

60 If the board has closed its file for a hearing in which it has not issued a final order,

- (a) the board, on its own initiative or on motion by any party, may re-open the hearing if it considers it to be in the public interest to do so;
- (b) an applicant may file a new application; or
- (c) an appellant in a matter for which the deadline to appeal to the board has not elapsed may file a new notice of appeal.

## PART 6 — COSTS

### Cost awards

61(1) In any hearing, the board may issue a cost award that requires the applicant to pay costs to an intervener who has

- (a) made a significant contribution relevant to the hearing that led to a better understanding of the issues before the board;
- (b) participated in the hearing in a responsible manner and cooperated with other interveners who have common objectives in the outcome of the hearing;
- (c) demonstrated a substantial interest in the outcome of the hearing; and
- (d) represented the interests of ratepayers or the public interest, and not merely its own business interest.

61(2) In determining the amount of costs to be awarded to an intervener, the board may consider any of the following:

- (a) whether the intervener made reasonable efforts to avoid the duplication of evidence or questions by collaborating with other similarly interested interveners;
- (b) whether the intervener took reasonable steps to minimize costs; and
- (c) whether the intervener needed legal or technical assistance to take part in the hearing.

61(3) The board may reduce or deny a cost award if, in the opinion of the board, the intervener

- (a) provided evidence that was unnecessarily duplicative of the evidence of other parties;
- (b) asked questions on cross-examination that were unduly repetitive of questions previously asked by another intervener;
- (c) submitted evidence and argument on issues not relevant to the hearing;
- (d) engaged in conduct that unnecessarily lengthened the duration of the hearing;
- (e) incurred costs for work that

- (i) did not assist the board in considering and adjudicating the issues in the hearing, or
  - (ii) did not contribute to the board's understanding of the issues;
  - (f) failed to provide an initial or updated intervenor budget under subsection 16(3); or
  - (g) failed to comply with a direction of the board.
- 61(4) A claim for costs may include a claim for Goods and Services Tax or Retail Sales Tax if the intervenor warrants that
- (a) they are required to remit the applicable tax; and
  - (b) they cannot recover the applicable tax through a tax credit, rebate or refund.

**Professional fees**

- 62(1) An intervenor's claim for costs may include professional fees for consultants, advisors, expert witnesses and legal counsel. But it must not include a claim for the intervenor's own attendance at the hearing.
- 62(2) For the purpose of subsection (1), the board may approve a schedule of maximum permissible rates for professional fees.

## PART 7 — SPECIAL PROCEDURES

### Hearings without notice

63(1) The board may hear an application without notice if, in the opinion of the board,

- (a) the matter is sufficiently urgent to make notice impracticable and the benefits of hearing the application expeditiously outweigh the desire for hearings of the board to be public; or
- (b) the matter is administrative in nature.

63(2) An applicant seeking to have the board hear the application without notice must fully disclose the reasons as to why the application should proceed without notice.

### Summary hearings

64 The board may direct that an application be heard in a summary manner, including holding the hearing

- (a) entirely in writing;
- (b) without oral evidence but with oral submissions;
- (c) without any interveners; or
- (d) without information requests.

### Appeals to the board

65(1) This section applies where a statute permits an appeal of a decision of the government, a utility or another tribunal to the board and the statute does not prescribe a different procedure for the appeal. If there is a conflict between the statute and this section, the statute prevails.

65(2) An appeal must be made to the secretary in writing within the time permitted by the applicable statute and include the following:

- (a) the name and contact information of the appellant;
- (b) the name of the decision-maker whose decision is being appealed;
- (c) if the decision is in writing, a copy of the decision;
- (d) a summary of the relevant facts;
- (e) the reasons for the appeal;

- (f) if the appeal is a residential disconnection appeal under section 104.1 of the Act, the additional information required under section 66.

65(3) The board may

- (a) agree to hear the appeal in writing or orally; or
- (b) summarily dismiss the appeal without a hearing if the board finds that the appeal is frivolous or vexatious.

65(4) If the board agrees to hear the appeal, it must

- (a) provide a copy of the appeal, including any documents filed together with the appeal, to the decision-maker whose decision is being appealed;
- (b) establish a process that enables both the appellant and the person whose decision is being appealed to provide evidence and make submissions; and
- (c) advise the parties of the following as soon as practicable:
  - (i) whether the appeal will be heard in writing or orally,
  - (ii) the date, time and place of the oral hearing, if applicable,
  - (iii) the dates for each party to file their supporting documents and argument, including any reply submissions by the person whose decision is being appealed.

65(5) Following the hearing of the appeal, the board may make a decision to confirm, vary or quash the decision being appealed. The decision must

- (a) be in writing;
- (b) set out the board's reasons for making the decision; and
- (c) be provided to both the appellant and the person whose decision is being appealed.

### **Residential Disconnection Appeals**

66(1) Subject to subsections (2) and (3), section 65 applies to appeals of a disconnection of residential premises made under section 104.1 of the Act.

66(2) In addition to the information required under subsection 65(2), a person appealing a disconnection of residential premises must provide the secretary with the following information:

- (a) the type, age, and use of the residence;

- (b) the number of people living at the residence;
  - (c) whether any of the people who live at the residence are children less than 12 years of age or are vulnerable as a result of old age, disability, illness, or other reasons;
  - (d) the appellant's financial circumstances and reasons why the appellant cannot pay the outstanding utility bills;
  - (e) a summary of any discussions between the applicant and the utility to settle the matter or agree to a payment plan;
  - (f) any attempts made by the applicant to pay the arrears.
- 66(3) Despite subsection 65(2), the secretary may agree to receive the appeal orally if they are satisfied that the appellant is not capable of making the appeal in writing.
- 66(4) The board may order a utility to reconnect residential premises pending the hearing of the appeal.
- 66(5) If the board is not available to make an order under subsection (4) in a timely manner and the secretary believes that a reconnection is necessary to protect human health or to prevent damage to property,
- (a) the secretary may direct the utility to reconnect the residential premises; and
  - (b) the board must issue an order ratifying or overturning the secretary's decision as soon as practicable.
- 66(6) In this section, "**residential premises**" means residential premises as defined in subsection 104.1(3) of the Act.

### Complaints

- 67(1) A person who is aggrieved by the conduct of a public utility or broker regulated under the Act may make a complaint to the board.
- 67(2) A complaint must be made to the secretary in writing and include the following:
- (a) the name and contact information of the complainant;
  - (b) the name and contact information of the public utility or broker;
  - (c) a summary of the relevant facts;
  - (d) the supporting documentation, if any;
  - (e) the remedy sought by the complainant.

- 67(3) Despite subsection (2), the secretary may agree to receive a complaint orally if they are satisfied that the complainant is not capable of making the complaint in writing.
- 67(4) If the secretary believes that the complaint may be warranted, they may request information and documents relevant to the complaint from the public utility or broker, as the case may be. The public utility or broker must provide the information and documentation within the time specified by the secretary.
- 67(5) After receiving the information and documents provided under subsections (2) and (4), the secretary may attempt to assist the complainant and the public utility or broker to resolve the complaint.
- 67(6) If the complainant and the public utility or broker are unable to resolve the complaint, the board may
- (a) dismiss the complaint;
  - (b) make any order authorized under the Act; or
  - (c) direct a hearing to be held before the board makes an order.
- 67(7) If the board directs a hearing to be held before the board makes an order, the board must advise the complainant and the public utility or broker of the following as soon as practicable:
- (a) whether the hearing will take place in writing or orally;
  - (b) the date, time and place of the oral hearing, if applicable, and
  - (c) the dates for each party to file their supporting documents and argument, including any reply submissions by the public utility or broker, as the case may be.
- 67(8) An order of the board issued under this section must
- (a) be in writing;
  - (b) set out the board's reasons for making the order; and
  - (c) be provided to both the complainant and the public utility or broker, as the case may be.
- 67(9) If the board receives more than one complaint based on similar facts or issues, the board may combine those complaints and jointly resolve them.



**Practice directions, policies and guidelines**

68(1) The board may issue practice directions, policies or guidelines to supplement these rules or address matters not governed by these rules.

68(2) These rules prevail to the extent that they are inconsistent with a practice direction, policy or guideline issued by the board.

**Appendix A — Intervener Request Form**

Page 1 of 2

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

9. State nature of the proposed intervention:			
a)	Do you intend	Yes	No
	(i) to appear throughout the hearing:		
	(ii) to participate in the production of evidence:		
	(iii) to participate in the testing of evidence:		
	(iv) to present final argument:		
b)	Do you intend to call witnesses:	Yes	No
c)	If yes to No. 9b), please provide witness:		
	(i) Name:		
	(ii) Address:		
	(iii) Qualifications:		
	(iv) Subject of submission (please note date for filing submission):		
10. Will you be applying for costs:		Yes	No
(Please refer to Part 6 of the Rules of Practice and Procedure and provide budget)			
11. Comments and other information:			

## Appendix B — Form of Information Request

[Date]

[Name of Proceeding]

[Party Asking]/[Party Responding]

[Party Asking]/[Party Responding] [Round]-[Question No.]

(example: PUB/MH 1-1)

<b>Part and Chapter:</b>		<b>Page No.</b>	
<b>Topic:</b>			
<b>Subtopic:</b>			

Preamble (if any):

Question:

Rationale for Question:

Response:

## Appendix C — Form of Declaration and Undertaking (Board Counsel and Expert Consultants)

In the matter of:

[NAME OF HEARING]

(the “Hearing”)

### **DECLARATION AND UNDERTAKING**

I, \_\_\_\_\_, am legal counsel or an expert consultant to the Public Utilities Board.

I declare that:

1. I have read the Public Utilities Board’s (“Board”) *Rules of Practice and Procedure*, as well as any procedural orders relating to the Hearing.
2. I understand that this Declaration and Undertaking applies to all information I receive in the Hearing that the Board has agreed to receive in confidence under Division 5 of Part 3 of the Board’s *Rules of Practice and Procedure* (“Confidential Information”).
3. I understand that the execution of this Declaration and Undertaking is a condition of my entitlement to receive access to Confidential Information and that a breach of this Declaration and Undertaking may result in any of the following:
  - a) an application to court to enforce the terms of the Declaration and Undertaking;
  - b) an immediate revocation of my right to receive or retain Confidential Information;
  - c) a refusal by the Board to authorize my receipt of Confidential Information in the future;
  - d) a decision by the Board to terminate my services.

4. The Board may enforce this Declaration and Undertaking in the Court of King's Bench if I breach it.

I undertake that:

1. I will use the Confidential Information exclusively to perform my duties within the scope of my Board-approved engagement.
2. I will not reproduce Confidential Information except to the extent required for me to perform my duties to the Board. For this purpose, "reproduce" includes making paper copies, making electronic copies, and reproducing or incorporating any of the Confidential Information in new documents.
3. I will protect the Confidential Information from unauthorized access.
4. I will not divulge Confidential Information except to another person who has been granted access to the Confidential Information by the Board and who has executed a Declaration and Undertaking.
5. If I become aware of a divulgence of Confidential Information in violation of this Declaration and Undertaking, I will promptly advise both the Board and the person who filed the Confidential Information of the divulgence in writing.
6. With respect to Confidential Information other than in electronic media, I will, promptly after having been requested to do so by the secretary of the Board:
  - a) return to the secretary of the Board all documents and materials in all media containing Confidential Information, including notes, charts, memoranda, transcripts and submissions based on such Confidential Information; or
  - b) destroy such documents and materials and file with the secretary of the Board a Certificate of Destruction in the form prescribed by the Board pertaining to the destroyed documents and materials.
7. With respect to Confidential Information in electronic media, I will:
  - a) promptly after having been requested to do so by the secretary of the Board, expunge all documents and materials containing Confidential Information, including notes, charts, memoranda, transcripts and submissions based on such Confidential Information, from all electronic apparatuses and data storage

media under my direction or control and file with the secretary of the Board a Certificate of Destruction in the form prescribed by the Board pertaining to the expunged documents and materials; and

- b) continue to abide by the terms of this Declaration and Undertaking in relation to any such documents and materials to the extent that they subsist in any electronic apparatus and data storage media under my direction or control and cannot reasonably be expunged in a manner that ensures that they cannot be retrieved.

Dated at \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Company/Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

## Appendix D — Form of Declaration and Undertaking (External Legal Counsel and Expert Consultants)

In the matter of:

[NAME OF HEARING]

(the “Hearing”)

### **DECLARATION AND UNDERTAKING**

I, \_\_\_\_\_, am counsel of record or an expert consultant for  
\_\_\_\_\_, a party to the Hearing.

I declare that:

1. I have read the Public Utilities Board’s (“Board”) *Rules of Practice and Procedure*, as well as any procedural orders relating to the Hearing.
2. I am not a director or employee of the party for whom I am acting in this Hearing, nor of any other party to the Hearing.
3. I understand that this Declaration and Undertaking applies to all information I receive in the Hearing that the Board has agreed to receive in confidence under Division 5 of Part 3 of the Board’s *Rules of Practice and Procedure* (“Confidential Information”).
4. I understand that the execution of this Declaration and Undertaking is a condition of the Board authorizing me, under an order of the Board, to receive access to Confidential Information and that a breach of this Declaration and Undertaking may result in any of the following:
  - a) an application to court to enforce the terms of the Declaration and Undertaking;
  - b) a denial or reduction of costs claimed by me in the Hearing;
  - c) an immediate revocation of my right to receive or retain Confidential Information;



d) a refusal by the Board to authorize my receipt of Confidential Information in future proceedings before the Board.

5. The Board may enforce this Declaration and Undertaking in the Court of King's Bench if I breach it.

I undertake that:

1. I will use the Confidential Information exclusively to perform my duties within the scope of my Board-approved engagement in the Hearing.
2. I will not reproduce Confidential Information except to the extent required for me to perform my duties related to the Hearing. For this purpose, "reproduce" includes making paper copies, making electronic copies, and reproducing or incorporating any of the Confidential Information in new documents.
3. I will protect the Confidential Information from unauthorized access.
4. I will not divulge Confidential Information except to another person who has been granted access to the Confidential Information by the Board and who has executed a Declaration and Undertaking.
5. If I become aware of a divulgence of Confidential Information in violation of this Declaration and Undertaking, I will promptly advise both the Board and the person who filed the Confidential Information of the divulgence in writing.
6. With respect to Confidential Information other than in electronic media, I will, within 10 days after the end of my participation in the Hearing:
  - a) return to the secretary of the Board all documents and materials in all media containing Confidential Information, including notes, charts, memoranda, transcripts and submissions based on such Confidential Information; or
  - b) destroy such documents and materials and file with the secretary of the Board a Certificate of Destruction in the form prescribed by the Board pertaining to the destroyed documents and materials.

7. With respect to Confidential Information in electronic media, I will:

- a) within 10 days after the end of my participation in the Hearing, expunge all documents and materials containing Confidential Information, including notes, charts, memoranda, transcripts and submissions based on such Confidential Information, from all electronic apparatuses and data storage media under my direction or control and file with the secretary of the Board a Certificate of Destruction in the form prescribed by the Board pertaining to the expunged documents and materials; and
- b) continue to abide by the terms of this Declaration and Undertaking in relation to any such documents and materials to the extent that they subsist in any electronic apparatus and data storage media under my direction or control and cannot reasonably be expunged in a manner that ensures that they cannot be retrieved.

For the purpose of paragraphs 6 and 7 of the undertaking, my participation in the Hearing is deemed to end on the day that any right of appeal of a final order of the Board in the Hearing has expired.

Dated at \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Company/Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

Fax: \_\_\_\_\_

## Appendix E — Form of Certificate of Destruction

In the matter of:

[NAME OF HEARING]

(the “Hearing”)

### **CERTIFICATE OF DESTRUCTION**

I, \_\_\_\_\_, was counsel of record or an expert consultant for  
[the Public Utilities Board / \_\_\_\_\_, a party to the Hearing] (*strike out  
or delete what does not apply*).

I certify that:

1. I have destroyed, or returned to the secretary of the Public Utilities Board, all Confidential Information and all documents and materials in non-electronic media that contain Confidential Information governed by the Declaration and Undertaking I signed for the purpose of the Hearing. This includes all notes, memoranda, transcripts and written submissions that contain Confidential Information.
2. I have expunged all Confidential Information and all documents and materials in electronic media that contain Confidential Information governed by the Declaration and Undertaking I signed for the purpose of the Hearing. This includes all notes, memoranda, transcripts and written submissions that contain Confidential Information and are located on any electronic apparatus or data storage medium that is under my direction or control.

Dated at \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Company/Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

Fax: \_\_\_\_\_